

United States
Circuit Court of Appeals
For the Ninth Circuit.

FERNAND CHEVILLARD and GEORGE
PATRON,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee

vs.

JULIO RODRIGUEZ,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Upon Appeals from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

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PAUL P. O'BRIEN,

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Nos. 11018 & 11022

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

PAGE

Appeal:

Certificate of Clerk to Transcript of Record on	311
Notice of (Fernand Chevillard)	43
Notice of (George Patron)	45
Notice of (Julio Rodriguez)	48
Praeipie for Contents of Record on (Rodriguez)	309
Praeipie for Contents of Record on (Chevillard and Patron)	73
Statement of Points and Designation of Record on (CCA)	313
Stipulation re Transcript of Record on....	308
Assignment of Errors of Chevillard and Patron	52
Assignment of Errors of Rodriguez.....	303
Bill of Exceptions of Chevillard and Patron...	76
Exhibits for United States:	
5—Delivery Tag, dated Jan. 23, 1945.	205
9—Delivery Tag signed by Rodriguez	206
18—Statement of Fernand Chevillard, Jan. 24, 1945	168

Index	Page
Bill of Exceptions—(Contd.)	
Charge to the Jury	255
Exceptions to Instructions	275
Instructions Requested by Defendants....	284
Motion to Strike out Evidence and Exhibits	189
Stipulation re Settling Bill of Exceptions, etc.	290
Witness—Defendant Fernand Chevillard (in own behalf) :	
—direct	234
—cross	248
—redirect	252
Witness—Defendant George Patron (in own behalf) :	
—direct	225
—cross	232
Witnesses for Defendant Rodriguez:	
Halstead, George	
—direct	208
—cross	210
Rodriguez, Julio	
—direct	211
—cross	220
Witnesses for United States:	
Barger, Homer	
—direct	154
—cross	155

Index

Page

Witnesses for United States—(Contd.)

Barral, Pierre Francois

—direct	123
—cross	134
—redirect	150
—recross	150

Brandt-Neilson, Melior

—direct	108
—cross	110
—redirect	113
—recross	113

Buggeln, Harold

—direct	117
—cross	117
—redirect	119
—recross	119
—recalled, direct	120
—cross	120

Dowd, Thomas P.

—direct	161
---------------	-----

Goodwin, George Edwin

—direct	183
—cross	184

Halstead, George

—direct	79
—cross	83
—recalled, direct	185
—rebuttal, direct	254

Index	Page
Witnesses for United States—(Contd.)	
Hamburg, Henry	
—direct	113
—cross	115
Heuck, Dean	
—direct	104
—cross	106
Hinman, Elroy	
—direct	89
—cross	97
—redirect	101
—recross	102
Hughes, Sarah	
—direct	157
—cross	158
Hurley, William J.	
—direct	162
Johnson, Dallas A.	
—direct	164
Kinelle, George M.	
—direct	152
—cross	153
Lawler, John	
—direct	121
—recalled, direct	122

Index

Page

Witnesses for United States—(Contd.)

Mancini, Joseph

—direct 156

—cross 156

Marchall, Harold

—direct 85

—cross 87

Roberts, Leslie W.

—direct 184

Schroeder, Herbert W.

—direct 182

Sterks, Michael

—direct 158

—cross 159

Wilson, Ronald A.

—direct 166

—cross 172

—redirect 181

—recalled, direct 183

—cross 183

Certificate of Clerk to Transcript of Record on
Appeal 311

Demurrer of Defendant Julio Rodriguez..... 8

Demurrer to Indictment of Defendants Chevill-
lard and Patron 12

Exceptions Noted to Order Overruling Demurrers
(Minute Order of Mar. 5, 1945)..... 15

Index	Page
Exceptions to Order Denying Motion for Bill of Exceptions (Minute Order of Mar. 5, 1945) ..	15
Indictment	2
Judgment and Sentence (Minute Order of Mar. 19, 1945)	28
Judgment and Commitment of:	
Fernand Chevillard	33
George Patron	35
Julio Rodriguez	37
Minute Orders:	
Feb. 10, 1945—Pleas of Not Guilty, Order Overruling Demurrers	13
Mar. 5, 1945—Order Denying Motion for Bill of Particulars, Exceptions and Ex- ceptions to Order Denying Demurrers...	15
Mar. 6, 1945—Trial, Jury Impaneled	16
Mar. 7, 1945—Trial Resumed	18
Mar. 8, 1945—Trial Resumed	19
Mar. 9, 1945—Trial Resumed	19
Mar. 13, 1945—Ordered Motions for Di- rected Verdict Denied	20
Mar. 14, 1945—Ordered Motions for Di- rected Verdict of Not Guilty Reserved..	23

Index

Page

Minute Orders—(Contd.)

Mar. 15, 1945—Ordered Motions for Directed Verdict Denied 24

Mar. 16, 1945—Verdict 25

Mar. 19, 1945—Judgment and Sentence... 27

Apr. 2, 1945—Order Bill of Exceptions be Filed 51

May 15, 1945—Order Extending Time to Settle and File Bill of Exceptions and to File Assignments of Error 75

July 5, 1945—Order Extending Time to Settle and File Proposed Bill of Exceptions, etc. 302

Motions in Arrest of Judgment by Chevillard and Patron 40

Motions for New Trials by Chevillard and Patron 41

Names and Addresses of Attorneys of Record 1

Notice of Appeal by:

Fernand Chevillard 43

George Patron 45

Julio Rodriguez 48

Order Denying Motion for Bill of Exceptions and Exceptions thereto (Minute Order of Mar. 5, 1945) 15

Index	Page
Order Denying Motion for Directed Verdict (Minute Order of Mar. 13, 1945)	20
Order Denying Motions for Directed Verdict (Minute Order of Mar. 15, 1945)	24
Order Extending Time to Settle and File Bill of Exceptions and to File Assignments of Errors (Minute Order of May 15, 1945)....	75
Order Extending Time to Settle and File Pro- posed Bill of Exceptions (Minute Order of July 5, 1945)	302
Order Overruling Demurrers (Minute Order of Feb. 10, 1945)	13
Order re Filing Bill of Exceptions.....	51
Order Reserving Motions for Directed Verdict of Not Guilty	23
Order Settling Bill of Exceptions	291
Pleas of Not Guilty	13
Praeipie for Contents of Record on Appeal by: Chevillard and Patron	73
Rodriguez	309
Proposed Additions to Bill of Exceptions (Pro- posed by Appellants Chevillard and Patron, by Julio Rodriguez	293
Statement of Points and Designation of Record on Appeal (CCA)	313
Stipulation re Transcript of Record on Appeal	308

Index**Page**

Stipulation Relating to Additions of Testimony Applicable to Julio Rodriguez, to Bill of Ex- ceptions on File Herein by Chevillard and Patron and United States of America.....	306
Verdict	27
(Minute Order of March 16, 1945).....	25

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Attorney for the Plaintiff and Appellee.

In the Southern Division of the United States District Court for the Northern District of California.

No. 29193-S

FIRST COUNT

(Title 18 U.S.C.A. Section 80):

In the November, 1944, Term of said Division of said District Court, the Grand Jurors upon their oaths present:

That Julio Rodriguez, Pierre Francois Barral, Fernand Chevillard, George Patron, Clarence Valentine Jacky, Lucien L. De Angury, and Angelo Italo Vincenzini, whose full and true names, and the full and true name of each of whom, except as herein mentioned, are otherwise unknown to this grand jury (hereinafter called said defendants), on the 23rd day of January, 1945, in the City of Oakland, County of Alameda, State of California, within the Southern Division of the Northern District of California and within the jurisdiction of this Court, did knowingly, wilfully, unlawfully, and feloniously make and cause to be made a false and fraudulent statement and representation in a matter within the jurisdiction of the War Shipping Administration, a department and agency of the United States of America, relating to a material fact, to wit, the receipt of certain meat ordered by and for the use of the said War Shipping Administration, which said statement and representation was false and fraudulent as follows:

That the said defendants, well knowing at all times

herein mentioned that the said War Shipping Administration had issued its orders to the Ed Heuck Company of San Francisco, [1*] California, (a limited partnership consisting of Edward L. Heuck, general partner; Dean Heuck, limited partner; and A. Pasquini, limited partner; hereinafter referred to as the Ed Heuck Company) for certain meat to be delivered to the said War Shipping Administration, falsely stated and represented to the said War Shipping Administration that approximately 64,793 pounds of meat had been delivered by the said Ed Heuck Company to the said War Shipping Administration and had been received by the said War Shipping Administration, when in truth and in fact, as the said defendants and each of them then and there well knew, only approximately 46,961 pounds of meat had been delivered by the said Ed Heuck Company for the use of the said War Shipping Administration.

SECOND COUNT

(Title 18 U.S.C.A. Section 80):

And the said Grand Jurors upon their oaths do further present that the said defendants Julio Rodriguez, Pierre François Barral, Fernand Chevillard, George Patron, Clarence Valentine Jacky, Lucien L. De Angury, and Angelo Italo Vincenzini, on the 23rd day of January, 1945, in the City of Oakland, County of Alameda, State of California, within the Southern Division of the Northern District of California and within the jurisdiction of this Court, did

*Page numbering appearing at foot of page of original Reporter's Transcript.

knowingly, wilfully, unlawfully, and feloniously cover up and conceal by a trick, scheme, and device a material fact within the jurisdiction of the War Shipping Administration, a department and agency of the United States of America, the material facts so covered up and concealed by a trick, scheme and device being as follows:

That the said defendants, well knowing at all times herein mentioned that the said War Shipping Administration had ordered from the Ed Heuck Company of San Francisco (a limited [2] partnership consisting of Edward L. Heuck, general partner; Dean Heuck, limited partner; and A. Pasquini, limited partner; and A. Pasquini, limited partner; hereafter referred to as the Ed Heuck Company) approximately 64,793 pounds of meat, to be delivered by the said Ed. Heuck Company to the said War Shipping Administration, diverted and withheld from said shipment approximately 17,832 pounds of said meat with the intent and for the purpose of converting the same to their own use, and with intent to defraud the said War Shipping Administration covered up and concealed said material fact of said diversion and conversion by the said defendants of said approximate amount of 17,832 pounds of meat by the trick, scheme, and device of signing and causing to be signed, and issuing and causing to be issued by the said War Shipping Administration, a receipt to the said Ed Heuck Company for approximately 64,793 pounds of meat.

THIRD COUNT

(Title 18 U.S.C.A. Section 88):

And the said Grand Jurors upon their oaths do further present that the said defendants Julio Rodriguez, Pierre Francois Barral, Fernand Chevillard, George Patron, Clarence Valentine Jacky, Lucien L. De Angury, and Angelo Italo Vincenzini, on or about the 16th day of January, 1945, in the City and County of San Francisco, State of California, within the Southern Division of the Northern District of California and within the jurisdiction of this Court, did, in violation of Title 18 U. S. C. A. Section 88, unlawfully, wilfully, knowingly, and feloniously conspire, combine, confederate, and agree together, and with divers persons whose names are to the Grand Jurors unknown, to commit offenses against the United States to wit, to defraud the United States in violation of Title 18 U.S.C.A. Section 80 in the manner following, to wit: [3]

That the said defendants at all times herein mentioned, knowing that the War Shipping Administration, a department and agency of the United States, had placed a purchase order with the Ed Heuck Company of San Francisco, California (a limited partnership consisting of Edward L. Heuck, general partner; Dean Heuck, limited partner; and A. Pasquini, limited partner; hereinafter referred to as the Ed Heuck Company) for approximately 64,793 pounds of meat for delivery to the said War Shipping Administration and for its use, conspired, confederated, and agreed together to cause the said Ed Heuck Company to present a claim, false in part,

to the said War Shipping Administration for payment from said War Shipping Administration for a total amount of approximately 64,793 pounds of meat, when in truth and in fact, as the said defendants and each of them then and there well knew, approximately only 46,961 pounds of meat would actually be delivered to the said War Shipping Administration by the said Ed Heuck Company; and by the said defendants making and causing to be made false statements and representations in a matter within the jurisdiction of the said War Shipping Administration, to wit, that approximately 64,793 pounds of meat had been received by the said War Shipping Administration from the said Ed Heuck Company, when in truth and in fact, as the said defendants and each of them then and there well knew, approximately only 46,961 pounds of meat had actually been delivered to and received by the said War Shipping Administration; and by the said defendants covering up and concealing by trick, scheme, and devise a material fact relating to a matter within the jurisdiction of said War Shipping Administration, to wit, said material fact being that the said defendants had diverted to their own use and personal gain approximately 17,832 pounds of meat from a [4] shipment consisting of approximately 64,793 pounds of meat purchased by and intended for the use of said War Shipping Administration from the said Ed Heuck Company, and covered up and concealed said material fact by the trick, scheme, and device of signing and causing to be signed, and issuing and causing to be issued by the said War Shipping Administration,

a receipt to the said Ed Heuck Company for approximately 64,793 pounds of meat.

That during the existence of said conspiracy and in furtherance of the same, and to effect the objects thereof, in said Division and District and within the jurisdiction of this Court, one or more of said defendants, as hereinafter mentioned by name, did the following overt acts, to wit:

1. That on or about the 16th day of January, 1945, in the City and County of San Francisco, State of California, the said defendants Julio Rodriguez and Pierre Francois Barral met and held a conversation with one Elroy Hinman;

2. That on or about the 18th day of January, 1945, in the City and County of San Francisco, State of California, the said defendants Pierre Francois Barral, George Patron, Fernand Chevillard, and Lucien L. De Angury met and held a conversation;

3. That on or about the 22nd day of January, 1945, the said defendant Fernand Chevillard telephoned from the City and County of San Francisco, State of California, to the said defendant Angelo Italo Vincenzini at the City of South San Francisco, State of California;

4. That on or about the 23rd day of January, 1945, in the City and County of San Francisco, State of California, the said defendants Lucien L. De Angury and Pierre Francois Barral drove a truck loaded with approximately 17,832 pounds of meat from the City and County of San Francisco, State of [5] California, to the City of Millbrae, County of San Mateo, State of California;

5. That on or about the 23rd day of January, 1945, in the City of Oakland, County of Alameda, State of California, the said defendant Julio Rodriguez signed a receipt from the Ed Heuck Company for 64,793 pounds of meat;

6. That on or about the 23rd day of January, 1945, in the City of Millbrae, County of San Mateo, State of California, the said defendants Pierre Francois Barral, Fernand Chevillard, George Patron, Clarence Valentine Jacky, and Lucien L. De Angury unloaded from a truck approximately 17,832 pounds of meat and placed the same in cold storage on the premises of the defendant Clarence Valentine Jacky.

FRANK J. HENNESSY,
United States Attorney.

TOM C. CLARK,
Assistant Attorney General.

[Endorsed]: A true bill, D. Bosschart, Foreman.

Presented in open court and ordered filed Jan. 31, 1945.

C. W. CALBREATH,
Clerk. [6]

[Title of Court and Cause.]

DEMURRER OF DEFENDANT JULIO
RODRIGUEZ

Now comes the defendant Julio Rodriguez (hereinafter referred to as "said defendant"), and not waiving his right to plead not guilty to the indict-

ment heretofore filed herein, files his demurrer to said indictment, and for grounds of demurrer specifies:

I.

That the first count of the indictment does not allege facts sufficient to constitute an offense under the laws of the United States.

II.

That the first count of the indictment is uncertain in this, that it does not appear nor can it be ascertained therefrom

(a) To what department and agency of the United States, if any, said defendant made or caused to be made a false or fraudulent statement and representation in a matter within the jurisdiction of the War Shipping Administration.

(b) How or in what manner said defendant made or caused to be made a false and fraudulent statement and representation to any department or agency of the United States.

III.

That the first count of said indictment is ambiguous for the reasons stated in paragraph II hereof.

IV.

That the first count of said indictment is indefinite for the reasons stated in paragraph II hereof.

V.

That the second count of said indictment does not allege facts sufficient to constitute an offense under the laws of the United States. [7]

VI.

That the second count of the indictment is uncertain in this, that it does not appear nor can it be ascertained therefrom:

(a) Whether or not said material fact alleged to have been covered up and concealed by a trick, scheme and device was in "any matter" within the jurisdiction of any department or agency of the United States.

(b) How or in what manner the diversion and conversion by the defendants of approximately 17,832 pounds of meat is a material fact in a matter within the jurisdiction of the War Shipping Administration.

VII.

That the second count of the indictment is ambiguous for the reasons stated in paragraph VI hereof.

VIII.

That the second count of the indictment is indefinite for the reasons stated in paragraph VI hereof.

IX.

That the third count of said indictment does not allege facts sufficient to constitute an offense under laws of the United States.

X.

That the third count of said indictment is uncertain in this, that it does not appear nor can it be ascertained therefrom: How or in what manner said defendant agreed to cause the said Ed Heuck Com-

pany to present a claim, false in part, to the said War Shipping Administration for payment from said War Shipping Administration.

XI.

That the third count of said indictment is ambiguous for the reasons stated in paragraph X hereof.

XII.

That the third count of said indictment is indefinite for the reasons stated in paragraph X hereof.

XIII.

That each of the counts of the indictment herein is uncertain, ambiguous and indefinite in that it does not appear from said counts how or in what manner said defendant, if at all, participated in the commission of any of the acts alleged to have been committed in said counts.

Wherefore, said defendant prays that this demurrer be sustained as to each and every count of said indictment and that said indictment and each and every count thereof be dismissed as to him.

JAMES B. O'CONNOR,

Attorney for Julio Rodriguez,
Defendant.

[Endorsed]: Filed Feb. 9, 1945. [9]

[Title of Court and Cause.]

DEMURRER TO INDICTMENT OF DEFEND-
ANTS CHEVILLARD AND PATRON

Come now Fernand Chevillard and George Patron, two of the defendants named in the above action, and jointly and severally demurring to the indictment on file herein and to each count thereof, each of said defendants for grounds of demurrer specifies:

I.

That the first count of said indictment does not state facts sufficient to constitute an offense against the laws of the United States or any offense at all.

II.

That the second count of said indictment does not state facts sufficient to constitute an offense against the laws of the United States or any offense at all.

III.

That the third count of said indictment does not state facts sufficient to constitute an offense against the laws of the United States or any offense at all.

IV.

That the first count of said indictment is uncertain in that it cannot be ascertained therefrom what purpose or intent was involved on the part of each of said demurring defendants in the alleged making and causing to be made of said false and fraudulent representation. [10]

Wherefore each defendant prays that this his de-

murrer be sustained and that he be allowed to go hence without day.

Dated: February 8th, 1945.

LEO R. FRIEDMAN,

Attorney for said Defendants.

Copy of the foregoing demurrer received this 9th day of February, 1945.

FRANK J. HENNESSY,

By V. C. HAMMACK,

Special Assistant to the
Attorney General.

[Endorsed]: Filed Feb. 9, 1945. [11]

District Court of the United States, Northern District of California, Southern Division

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Saturday, the 10th day of February, in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable A. F. St. Sure, District Judge.

No. 29193

UNITED STATES OF AMERICA,
vs.

JULIO RODRIGUEZ, PIERRE FRANCOIS
BARRAL, FERNAND CHEVILLARD,
GEORGE PATRON, CLARENCE VALEN-
TINE JACKY, LUCIEN L. DE ANGURY
and ANGELO ITALO VINCENZINI.

PLEAS OF NOT GUILTY, AND ORDER
OVERRULING DEMURRERS

This case came on regularly this day for entry of plea. Valentine C. Hammack, Esq., Special Assistant United States Attorney, was present on behalf of the United States. The defendants were present with their respective attorneys, viz: Sol A. Abrams, Esq., for Pierre Francois Barral and Lucien L. De Angury; A. J. Zirpoli, Esq., for Angelo Italo Vincenzini; Leo Friedman, Esq., for Fernand Chevillard, and George Patron; Mr. Reisner for Julio Rodriguez, and Mr. Mahoney for Clarence Valentine Jacky. Defendants Julio Rodriguez, Lucien L. De Angury and Pierre Francois Barral were in custody of the United States Marshal; the remaining defendants were at large on bond heretofore given.

The defendants were called to plead and thereupon each [12] defendant pleaded "Not Guilty" to the Indictment filed herein, which said pleas were ordered entered.

Mr. O'Connor requested and was granted permission by the Court to withdraw as counsel for defendant Julio Rodriguez.

After hearing the attorneys, it is ordered that the demurrers of all defendants to the Indictment herein be and the same are hereby overruled. Ordered that this case be continued to February 16, 1945, to be set for trial. The motion of defendant Julio Rodriguez for reduction of bail was ordered denied. Further ordered that defendants Julio Rodriguez, Lucien L. De Angury and Pierre Francois Barral in default of bail be remanded to the custody of the United States Marshal. [13]

District Court of the United States, Northern District of California, Southern Division.

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday the 5th day of March, in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Louis E. Goodman, District Judge.

[Title of Cause.]

Order Denying Motion for Bill of Particulars; Also
Noting Exception re Court's Ruling on Demurrers Heretofore Made; Etc.

In this case Leo R. Friedman, Esq., attorney for defendant Fernand Chevillard and George Patron,

made a motion for a Bill of Particulars. After hearing the arguments of Mr. Friedman and Valentine C. Hammack, Esq., Special Assistant Attorney General, it is ordered that said motion be denied and to which ruling of the Court an exception was noted. Further ordered that an exception be noted as to all defendants as to the ruling on demurrers heretofore made by Hon. A. F. St. Sure, District Judge. Order that this case be continued to March 6, 1945, for trial.

District Court of the United States, Northern District of California, Southern Division

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 6th day of March, in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Louis E. Goodman, District Judge.

[Title of Cause.]

TRIAL—JURY IMPANELED

This case came on regularly this day for trial. Valentine C. Hammack, Esq., Special Assistant Attorney General, appeared on behalf of the United States. The defendants Fernand Chevillard and George Patron were present with their attorneys, Leo R. Fried-

man, Esq., and John B. Molineri, Esq. Defendant Clarence Valentine Jacky was present with his attorneys, Sol A. Abrams, Esq., and E. C. Mahoney, Esq. Defendant Angelo Italo Vincenzini was present with his attorney, A. J. Zirpoli, Esq. Defendant Julio Rodriguez was present in the custody of the United States Marshal. Herbert Resner, Esq., appeared as attorney for defendant Julio Rodriguez. Thereupon the following persons, viz: Mrs. Jean G. Conlon, Jonathan H. Cosbie, Albert S. Everett, Harry A. Fialer, [15] Vernon M. Brown, Frank C. Ferns, Laurette J. Apel, Ethel L. Fairbairn, Frances Faivre, Mrs. Blanche T. Chapman, Miss Alice Clemens, Arthur C. Farris, twelve good and lawful jurors, were, after being duly examined under oath, accepted and sworn to try the issues joined herein. Mr. Hammack made a statement to the Court and jury on behalf of the United States. George Halstead, Harold Marchal and Leroy Hinman were sworn and testified on behalf of the United States. Mr. Hammack introduced and filed in evidence United States Exhibits 1, 2, 3, 4 and 5. The hour of adjournment having arrived, the Court, after admonishing the jury, ordered that the further trial of this case be continued to March 7, 1945, at 10 o'clock A. M.

Ordered that defendant Julio Rodriguez be remanded into the custody of the United States Marshal. [16]

District Court of the United States, Northern District of California, Southern Division

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 7th day of March, in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Louis E. Goodman, District Judge.

[Title of Cause.]

TRIAL RESUMED

The parties hereto and the jury heretofore impaneled being present, the trial of this case was this day resumed. Leroy Hinman resumed the stand for further cross examination. Dean Heuck, Melior Brandt Neilson, Henry Hamburg, Harold Buggeln, John Lawler and Pierre Francois Barral were sworn and testified on behalf of the United States. Mr. Hammack introduced in evidence and filed U. S. Exhibits Nos. 6, 7 a-b-c, and 9; and introduced for identification U. S. Exhibits 8 a-b-c and 10 a-b. On motion of Mr. Hammack, it is ordered that Mr. Hammack be allowed to withdraw U. S. Exhibit No. 10 a and b for identification until March 8, 1945. Mr. Abrams introduced defendant's Exhibits A 1-5 and B for identification. The hour of adjournment having arrived, ordered further trial of this case be continued to March 8, 1945, at 10 A. M. Ordered defendant Julio Rodriguez remanded to custody of United States Marshal. [17]

District Court of the United States, Northern District of California, Southern Division

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 8th day of March, in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Louis E. Goodman, District Judge.

[Title of Cause.]

TRIAL RESUMED

The parties hereto and the jury heretofore impaneled being present as heretofore, trial was resumed. Pierre Francois Barral resumed the stand for further testimony. George Kinelle, Homer Barger and Joseph Mancini were sworn and testified on behalf of the United States. John Lawler and Harold Bugeln were recalled for further testimony. Mr. Hammack introduced in evidence and filed U. S. Exhibits Nos. 11, 12, and 10 which were formerly 10 a and b for identification. The hour of adjournment having arrived, it is ordered that the further trial of this case be continued to March 9, 1945, at 10 A. M. [18]

District Court of the United States, Northern District of California, Southern Division

At a stated term of the Southern Division of the United States District Court for the Northern Dis-

trict of California, held at the Court Room thereof, in the City and County of San Francisco, on **Friday**, the 9th day of March, in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Louis E. Goodman, District Judge.

[Title of Cause.]

TRIAL RESUMED

The parties hereto and the jury heretofore impaneled being present as heretofore, the further trial of this case was this day resumed. Sarah Hughes, Michael Sterks, Thomas P. Dowd, William J. Hurley, Dallas A. Johnson, Ronald A. Wilson, Herbert H. Schroeder and George Van Gerpen were sworn and testified on behalf of the United States. Mr. Hammack introduced in evidence and filed U. S. Exhibits Nos. 14, 15 a-b-c, 16, 17, 18, 19, 20 and 21. The hour of adjournment having arrived, the Court, after admonishing the jury, ordered that the further trial of this case be continued to March 13, 1945, at 10 o'clock A. M. [19]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof,

in the City and County of San Francisco, on Tuesday, the 13th day of March, in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Louis E. Goodman,
District Judge.

[Title of Cause.]

TRIAL RESUMED—ORDERED MOTION FOR
DIRECTED VERDICT ON BEHALF OF
DEFENDANTS PATRON AND CHEVIL-
LARD DENIED

The parties hereto and the jury heretofore impaneled being present, the further trial of this case was this day resumed. Mr. Abrams introduced Defendant's Exhibit C for identification. George Edwin Goodwin and Leslie W. Roberts were sworn and testified on behalf of the United States. George Halstead was recalled for further testimony. In the absence of the jury, Mr. Zirpoli made motions to strike certain testimony and for a directed verdict of acquittal, and for dismissal of the Indictment as to the defendant Angelo Italo Vincenzini. After hearing the arguments of Mr. Zirpoli and Mr. Hammack, it is ordered that the said motions be granted and that the Indictment be dismissed as to said defendant Angelo Italo Vincenzini, and that his bond be exonerated. Mr. Abrams made a motion [20] for a directed verdict of acquittal and for dismissal of the Indictment as to defendant Clarence Valentine Jacky. After hearing the arguments of Mr. Abrams and Mr. Hammack, it is Ordered that said motion

be granted and that the Indictment as to defendant Clarence Valentine Jacky be dismissed, and that his bond be exonerated. On behalf of the defendants Fernand Chevillard and George Patron, Mr. Friedman made motions to strike out certain testimony of the witnesses Halstead, Barral, Hinman, Neilson, Hamburg and Sterks; motions to exclude from evidence exhibits Nos. 1, 4, 5, 6, 9, 13 and 18; and motions for directed verdict of not guilty on each of Counts One, Two and Three. After hearing the arguments with respect to each motion by Mr. Friedman, the Court ordered that each motion be denied. Mr. Resner, on behalf of the defendant Julio Rodriguez, made motions to strike Exhibits 1, 3, 4, 5, 6, 7 a-b-c, 9, 10, 11, 12, 13, 16 and 17; motions to strike certain testimony of the witnesses Hinman, Barral, all agents of the Federal Bureau of Investigation, except Johnson, Kinelle, Mancini, Halstead, Marchal, Hamburg and Buggeln; and motion for a directed verdict of acquittal. After hearing the arguments of Mr. Resner, Ordered each of said motions denied.

Thereupon the jury was returned to the Court Room. George Halstead and Julio Rodriguez were sworn and testified on behalf of the defendants. Mr. Resner introduced in evidence and filed Defendant's Exhibits D, E and F. The hour of adjournment having arrived, the Court, after admonishing the jury, ordered that the further trial of this case be continued to March 14, 1945, at 10 o'clock A.M.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 14th day of March, in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Louis E. Goodman,
District Judge.

[Title of Cause.]

TRIAL RESUMED—ORDERED MOTION FOR
DIRECTED VERDICT OF NOT GUILTY
RESERVED

The parties hereto and the jury heretofore impaneled being present, the trial of this case was this day resumed. Julio Rodriguez resumed the stand for further testimony. George Patron and Fernand Chevillard were sworn on behalf of the defendants; and the defendants rested. George Halstead and Dallas A. Johnson were recalled for rebuttal. Mr. Hammack introduced in evidence and filed U. S. Exhibit No. 22. In the absence of the Jury, Mr. Friedman made motions for directed verdict of not guilty on behalf of defendants Fernand Chevillard and George Patron. Mr. Resner made a motion for directed verdict of not guilty on behalf of defendant Julio Rodriguez. The Court ordered ruling on said motions reserved. The jury returned into Court. Mr. Friedman filed in evi-

dence [22] Defendant's Exhibit A, on behalf of defendants Fernand Chevillard and George Patron, formerly Defendant's Exhibit C for identification. The Court, after admonishing the jury, ordered that the further trial of this case be continued to March 15, 1945, at 10 A. M. [23]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday the 15th day of March, in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Louis E. Goodman,
District Judge.

[Title of Cause.]

TRIAL RESUMED—ORDERED MOTION FOR
DIRECTED VERDICT DENIED

The parties hereto and the jury heretofore impaneled being present as heretofore, trial was resumed. Dallas A. Johnson was recalled for further testimony, and the evidence was closed. Ordered that the motions for directed verdicts made on March 14, 1945, by Mr. Friedman and Mr. Resner upon which ruling was reserved be denied. Mr. Hammack, Mr. Friedman and Mr. Resner made arguments to the jury. The hour of adjournment

having arrived, the Court, after admonishing the jury, ordered that the further trial of this case be continued to March 16, 1945, at 10 a.m. [24]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Friday the 16th day of March, in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Louis E. Goodman,
District Judge.

[Title of Cause.]

TRIAL RESUMED—VERDICT

The parties hereto and the jury heretofore impaneled being present as heretofore, trial was resumed. After concluding argument by Mr. Hammack and the instructions of the Court to the jury, the jury at 11:53 a.m., retired to deliberate upon its verdict. At 4:53 P.M. the jury returned into Court and upon being asked if they had agreed upon a verdict, replied in the affirmative and returned the following verdict which was ordered recorded, viz:

“We, the Jury, find as to the defendants at the bar as follows:

Fernand Chevillard—Not Guilty as to Count 1. Guilty as to Count 2. Guilty as to Count 3.

George Patron—Not Guilty as to Count 1. Guilty as to Count 2. Guilty as to Count 3. [25]

Julio Rodriguez—Guilty as to Count 1. Guilty as to Count 2. Guilty as to Count 3.

Clarence Valentine Jacky—Not Guilty on all Counts, per direction of the Court.

Angelo Italo Vincenzini—Not Guilty on all Counts, per direction of the Court.

A. S. EVERETT,
Foreman.”

Upon being asked if said verdict as recorded is the verdict of the jury, each juror replied that it is. At the request of Mr. Friedman, the jury was polled. Ordered that the jury be excused from further consideration of this case and from attendance upon the Court until notified to report.

On motion of Mr. Friedman, it is ordered that the matter of pronouncing of judgment herein be continued to March 19, 1945, at 10 a.m. Further ordered that the defendants be remanded to the custody of the United States Marshal to await judgment, and that mittimus issue. [26]

* * * *

In the Southern Division of the United States
District Court for the Northern District of
California

No. 29193-G

THE UNITED STATES OF AMERICA

vs.

RODRIGUEZ, et al.

VERDICT

We, the Jury, find as to the defendants at the bar
as follows:

Ferrand Chevillard: Not Guilty as to Count 1.
Guilty as to Count 2. Guilty as to Count 3.

George Patron: Not Guilty as to Count 1. Guilty
as to Count 2. Guilty as to Count 3.

Julio Rodriguez: Guilty as to Count 1. Guilty
as to Count 2. Guilty as to Count 3.

Clarence Valentine Jacky: Not Guilty on all
counts per direction of the Court.

Angelo Italo Vincenzini: Not Guilty on all counts
per direction of the Court.

A. S. EVERETT

Foreman.

[Endorsed]: Filed March 16, 1945. [27]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the Southern Division of the
United States District Court for the Northern Dis-

trict of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 19th day of March, in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Louis E. Goodman,
District Judge.

[Title of Cause.]

JUDGMENT AND SENTENCE

This case came on regularly this day for pronouncing of judgment. The defendant Julio Rodriguez was present in the custody of the United States Marshal and with his attorney, Herbert Resner, Esq. James Burns, Esq., Special Attorney, was present on behalf of the United States.

The defendant was called for judgment. Mr. Resner made a motion in arrest of judgment; motion for new trial; and a motion for probation, which said motions were ordered denied. After hearing the attorneys, and said defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, Julio Rodriguez, [28] having been convicted on the verdict of the jury of guilty of the offenses charged in the Indictment, be and he is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Two (2) Years on each of Counts One, Two and Three of the Indictment.

It Is Further Ordered that the sentences of imprisonment imposed on defendant, in this case, on Counts One and Two of the Indictment commence and run concurrently, and that the sentence of imprisonment imposed on defendant on Count Three of the Indictment commence and run at the expiration of the sentences of imprisonment imposed on defendant on Counts One and Two of the Indictment.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

The Court recommends commitment to a U. S. Penitentiary.

This case also came on regularly this day for pronouncing of judgment as to the defendants Fernand Chevillard and George Patron. The defendants were present in the custody of the United States Marshal and with their attorney, Leo Friedman, Esq. James Burns, Esq., Special Attorney, was present on behalf of the United States.

The defendants were called for judgment. Mr. Friedman made a motion for a new trial and a motion in arrest of judgment [29] on Count Two of the Indictment. After hearing the arguments of the attorneys, it is Ordered that the said motions be denied. After hearing the attorneys, and said defendants having been now asked whether they have

anything to say why judgment should not be pronounced against them, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendants Fernand Chevillard and George Patron, having been convicted on the verdict of the jury of guilty of the offenses charged in the Second and Third Counts of the Indictment, be and each is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Two (2) Years on each of Counts Two and Three of the Indictment.

It Is Further Ordered that the sentence of imprisonment imposed on each defendant on Count Three of the Indictment commence and run at the expiration of the sentence of imprisonment imposed on said defendants on Count Two of the Indictment.

(Jury returned Verdict of Not Guilty as to Count One of the Indictment.)

Ordered that judgment be entered herein as to each of said defendants.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitments herein.

The Court recommends commitment to a U. S. Penitentiary.

Mr. Friedman filed Notice of Appeal and made a motion for release of defendants on bail pending

appeal, which said motion was ordered granted, and that bail on appeal be fixed at \$15,000.00 each. [30]

This case also came on regularly this day for the pronouncing of judgment as to defendant Pierre Francois Barral. The defendant was present in the custody of the United States Marshal and with his attorney, Sol A. Abrams, Esq. James Burns, Esq., Special Attorney, was present on behalf of the United States.

The defendant was called for judgment. After hearing the attorneys, and said defendant having been now asked whether he has anything to say why judgment should not be pronounced against him and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant Pierre Francois Barral, having been convicted on his plea of "Guilty" of the offenses charged in the Indictment, be and he is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Two (2) Years on each of Counts One and Two of the Indictment; and be imprisoned for the period of One (1) Year on Count Three of the Indictment.

It Is Further Ordered that the sentences of imprisonment imposed on defendant, in this case, on Counts One and Two of the Indictment commence and run concurrently, and that the sentence of imprisonment imposed on defendant on Count Three of the Indictment commence and run at the expiration of the sentences of imprisonment imposed on

defendant on Counts One and Two of the Indictment.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and [31] that the same shall serve as the commitment herein.

The Court recommends commitment to a U. S. Penitentiary.

This case also came on regularly this day for the pronouncing of judgment as to the defendant Lucien L. De Angury. The defendant was present in the custody of the United States Marshal and with his attorney, Sol A. Abrams, Esq. James Burns, Esq., Special Attorney, was present on behalf of the United States.

The defendant was called for judgment. Mr. Abrams made a motion to withdraw plea of Guilty and to plead Not Guilty to Counts One and Two of Indictment. After hearing the attorneys, it is ordered that this case be continued to March 20, 1945, for pronouncing of judgment and for hearing on said motion to withdraw plea. [32]

District Court of the United States, Northern
District of California, Southern Division

No. 29193-S Criminal Indictment in three counts
for violation of Title 18 U.S.C.A. Sections 80
and 88.

UNITED STATES

v.

FERNAND CHEVILLARD

JUDGMENT AND COMMITMENT

On this 19th day of March, 1945, came the United States Attorney, and the defendant Fernand Chevillard appearing in proper person, and by counsel, and,

The defendant having been convicted on verdict of guilty of the offenses charged in the 2nd & 3rd Cts. of Ind. in the above-entitled cause, to wit: Viol. Title 18 USCA Sec. 80. Count II. Defendant did, on January 23, 1945, in Oakland, Calif., conceal a material fact in a matter within the jurisdiction of the War Shipping Administration, to-wit: diversion for his own use, of 17,832 pounds of meat intended for the War Shipping Administration. Count III. Title 18 USCA, Sec. 88. Defendant did, on January 16, 1945, and thereafter, in San Francisco, Calif., conspire with divers persons to commit offenses against the United States in violation of Title 18 USCA, Sec. 80, and did various overt acts to effect the object of said conspiracy; and the defendant having been now asked whether

he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Two (2) Years on each of Counts Two and Three of the Indictment;

It Is Further Ordered that the sentence of imprisonment imposed on defendant on Count Three of the Indictment commence and run at the expiration of the sentence of imprisonment imposed on defendant on Count Two of the Indictment.

(Jury returned Verdict of Not Guilty as to Count One of the Indictment)

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Examined by:

VALENTINE C. HAMMACK

Special Assistant to the Attorney General.

(Signed) LOUIS E. GOODMAN

United States District Judge.

The Court recommends commitment to a U. S. Penitentiary.

Filed and Entered this 19th day of March, 1945.

(Signed) C. W. CALBREATH

Clerk.

By R. E. WOODWARD

Deputy Clerk.

Entered in Vol. 35 Judg. and Decrees at Page
432. [33]

District Court of the United States, Northern
District of California, Southern Division

No. 29193-S. Criminal Indictment in three counts
for violation of Title 18 U.S.C.A. Sections 80
and 88.

UNITED STATES

v.

GEORGE PATRON

JUDGMENT AND COMMITMENT

On this 19th day of March, 1945, came the United States Attorney, and the defendant George Patron appearing in proper person, and by counsel, and,

The defendant having been convicted on verdict of guilty of the offenses charged in the 2nd & 3 Cts. of Ind. in the above-entitled cause, to wit: Viol. 18 USCA Sec. 80. Count II. Defendant did, on January 23, 1945, in Oakland, Calif., conceal a material fact in a matter within the jurisdiction of the War Shipping Administration, to-wit: diversion for his

own use, of 17,832 pounds of meat intended for the War Shipping Administration. Count III. 18 USCA Sec. 88. Defendant did, on January 16, 1945, and thereafter, in San Francisco, Calif., conspire with divers persons to commit offenses against the United States in violation of Title 18 USCA, Section 80, and did various overt acts to effect the object of said conspiracy; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Two (2) Years on each of Counts Two and Three of the Indictment;

It Is Further Ordered that the sentence of imprisonment imposed on defendant on Count Three of the Indictment commence and run at the expiration of the sentence of imprisonment imposed on defendant on Count Two of the Indictment.

(Jury returned Verdict of Not Guilty as to Count One of the Indictment.)

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Examined by:

VALENTINE C. HAMMACK

Special Assistant to the At-
torney General

(Signed) LOUIS E. GOODMAN

United States District Judge.

The Court recommends commitment to a U. S.
Penitentiary.

Filed and Entered this 19th day of March, 1945.

(Signed) C. W. CALBREATH

Clerk.

By R. E. WOODWARD

Deputy Clerk.

Entered in Vol. 35 Judg. and Decrees at Page
433. [34]

District Court of the United States, Northern
District of California, Southern Division

No. 29193-S. Criminal Indictment in three counts
for violation of Title 18 U.S.C.A. Sections 80
and 88.

UNITED STATES

v.

JULIO RODRIGUEZ

JUDGMENT AND COMMITMENT

On this 19th day of March, 1945, came the United
States Attorney, and the defendant Julio Rodriguez
appearing in proper person, and by counsel, and,

The defendant having been convicted on verdict of guilty of the offenses charged in the Indictment in the above-entitled cause, to-wit:

Violation of Title 18 USCA, Sec. 80. Count I. Defendant did, on January 23, 1945, in Oakland, California, cause to be made to the War Shipping Administration, a false and fraudulent statement concerning the receipt of certain meat ordered for the use of said War Shipping Administration. Count II. Title 18 USCA, Sec. 80. Defendant did, at said time and place, conceal a material fact in a manner within the jurisdiction of the War Shipping Administration, to-wit: diversion for his own use of 17,832 pounds of meat intended for the War Shipping Administration. Count III. Title 18 USCA, Sec. 88. Defendant did, on January 16, 1945, and thereafter, in San Francisco, California, conspire with divers persons to commit offenses against the United States in violation of Title 18 USCA, Section 80, and did various overt acts to effect the object of said conspiracy; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Two (2) Years on each of Counts One, Two and Three of the Indictment;

It Is Further Ordered that the sentences of imprisonment imposed on defendant, in this case, on Counts One and Two of the Indictment commence and run concurrently, and that the sentence of imprisonment imposed on defendant on Count Three of the Indictment commence and run at the expiration of the sentences of imprisonment imposed on defendant on Counts One and Two of the Indictment.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Examined by:

VALENTINE C. HAMMACK

Special Assistant to the At-
torney General

(Signed) LOUIS E. GOODMAN

United States District Judge.

The Court recommends commitment to a U. S. Penitentiary.

Filed and Entered this 19th day of March, 1945.

(Signed) C. W. CALBREATH

Clerk.

By R. E. WOODWARD

Deputy Clerk.

Entered in Vol. 35 Judg. and Decrees at Page
434. [35]

In the Southern Division of the United States
District Court for the Northern District of
California.

No. 29193-G

THE UNITED STATES OF AMERICA

vs.

FERNAND CHEVILLARD and GEORGE
PATRON, et al.,

Defendants.

MOTIONS IN ARREST OF JUDGMENT

And now, after verdict against each of the above named defendants—Fernand Chevillard and George Patron—and before sentence, comes each of the said defendants in his own proper person, by his attorney Leo R. Friedman, and, each for himself and not one for the other, moves the Court here to arrest judgment herein on the offense set forth in Count Two of the Indictment and the verdict finding him guilty on said Count Two and not to pronounce judgment thereon for the following reasons, to-wit:

1. That the second count of said indictment does not state facts sufficient to constitute a public offense under the laws of the United States against said defendant.
2. That it appears from the record that judgment, if made and rendered and entered, would be unlawful.
3. That the second count of the indictment is

not sufficient in form or substance to enable this defendant or either of said defendants to plead the judgment in bar of another [36] prosecution for the same offense.

Wherefore, because of which said errors in the record here no lawful judgment can be rendered by the Court, each of said defendants prays that this Honorable Court arrest and withhold the judgment herein on said second count of the indictment and that the verdict of guilty on said second count be vacated and set aside and declared null and void.

Dated: March 19, 1945.

LEO R. FRIEDMAN

Attorney for defendant Chevillard and Patron

[Endorsed]: Filed Mar. 19, 1945. [37]

[Title of District Court and Cause.]

MOTIONS FOR NEW TRIALS

Comes now Fernand Chevillard and George Patron, two of the defendants above named, by Leo R. Friedman their attorney, and, each for himself and not one for the other, moves the court to set aside the verdicts finding him guilty on counts 2 and 3 of the indictment and to grant him a new trial on each of said counts, and as reasons therefore specifies the following:

1. That the court erred in denying his motion for a Bill of Particulars in all respects.

2. That the verdict of guilty on count 2 is contrary to the law.

3. That the verdict of guilty on count 3 is contrary to the law.

4. That the verdict of guilty on count 2 is not supported by the evidence in the case.

5. That the verdict of guilty on count three is not supported by the evidence in the case. [38]

6. That the verdict of guilty on count three is not supported by the evidence in the case.

7. That the court upon the trial of the case admitted incompetent evidence, offered by the United States in support of count two.

8. That the court upon the trial of the case admitted incompetent evidence offered by the United States in support of count three.

9. That the court upon the trial of the case excluded competent evidence offered by defendant in defense of count two of the indictment.

10. That the court upon the trial of the case excluded competent evidence offered by defendant in defense of count three of the indictment.

11. That the court improperly curtailed the cross examination of the witness Barral.

12. That the court improperly instructed the jury to the substantial prejudice of the defendant.

13. That the court, refused, to the substantial prejudice of defendant, to give correct instructions on the law pertaining to count two, as tendered and requested by defendant.

14. That the court refused, to the substantial prejudice of defendant, to give correct instructions on the law pertaining to count three, as tendered and requested by defendant.

15. That the court erred in refusing to direct a verdict of "Not Guilty" at the close of all the evidence on count two.

16. That the court erred in refusing to direct a verdict of "Not Guilty" on count three, at the close of all the evidence.

Dated: March 19, 1945.

LEO R. FRIEDMAN,

Attorney for Defendants

Chevillard and Patron.

[Endorsed]: Filed Mar. 19, 1945. [39]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: Fernand Chevillard, 520 Cherry Ave., San Bruno, California.

Name and address of appellant's attorney: Leo R. Friedman, 935 Russ Building, San Francisco.

Offense: Violating Title 18 U. S. C. A. Sec. 80 (using trick and device to conceal material fact from War Shipping Administration). Violating Title 18 U. S. C. A. Sec. 88. (Conspiracy to defraud United States.

Date of judgment: March 19, 1945.

Brief description of judgment or sentence: Count

2: Sentenced to imprisonment in prison for 2 years, and fine of \$. Count 3; Sentenced to imprisonment in prison for 2 years and fine of \$. Sentences consecutive.

Name of prison where now confined, if not on bail:

I, the above named appellant, do hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgments above mentioned on the grounds set forth below.

FERNAND CHEVILLARD,
Appellant.

Dated: March 19, 1945. [40]

GROUND OF APPEAL

1. The court erred in overruling the demurrer to the indictment, and to each count thereof.

2. That count 2 of the indictment does not state an offense against the laws of the United States as to said defendant.

3. That the court erred in denying defendant's motion for a Bill of Particulars.

4. Insufficiency of the evidence to support the verdict and/or judgment on count 2 of the indictment.

5. That count 3 of the indictment does not state an offense against the laws of the United States as to said defendant.

6. Insufficiency of the evidence to support the verdict and/or judgment on count 3 of the indictment.

7. The trial court admitted incompetent evidence against defendant offered by the United States.

8. The trial court excluded competent evidence offered by the defendant.

9. The trial court erroneously instructed the jury on questions of law relating to each of the counts on which defendant was convicted.

10. The trial court erred in refusing to give defendant's requested instructions numbered: 3, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 19, 22, 23, 31, 33, 34, 35, and 37.

11. The trial court erred in its instructions to the jury on (a) reasonable doubt (b) circumstantial evidence, (c) definition of a principal in crime, (d) what constitutes an aider and abettor, and (e) the third count of the indictment as charging a conspiracy to do more than defraud the United States.

12. The trial court erred in denying defendants two motions for a directed verdict on count 2 and count 3 of the indictment. [41]

13. The court erred in limiting the cross examination of the witness Barral.

14. The court erred in denying the motion in arrest of judgment as to count 2 of the indictment.

15. The verdicts on counts 1 and 2 are inconsistent.

[Endorsed]: Filed Mar. 19, 1945. [42]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: Goerge Patron,
1326 Powell Street, San Francisco, California.

Name and address of appellant's attorney: Leo R.

Friedman, 935 Russ Buliding, San Francisco, California.

Offense: Violating Title 18 U. S. C. A. Sec. 80 (using trick and device to conceal material fact from War Shipping Administration.) Violating Title 18 U. S. C. A. Sec. 88 (Conspiracy to defraud United States.)

Date of judgment: March 19, 1945.

Brief description of judgment and sentence: Count 2: Sentenced to imprisonment in prison for 2 years and fine of \$. Count 3: Sentenced to imprisonment in prison for 2 years and fine of \$. Sentences consecutive.

Name of prison where now confined, if not on bail.

I, the above named appellant, do hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgments above mentioned on the grounds set forth below.

GEORGE PATRON,
Appellant.

Dated: March 19, 1945. [43]

GROUND OF APPEAL

1. The court erred in overruling the demurrer to the indictment and to count 2 and count 3 thereof.

2. Count 2 of the indictment does not state an offense against the laws of the United States as to appellant.

3. Count 3 of the indictment does not state an offense against the laws of the United States as to appellant.

4. The court erred in denying appellant's motion for a Bill of Particulars.

5. Insufficiency of the evidence to support the verdict and/or judgment on count of the indictment.

6. Insufficiency of the evidence to support the verdict and/or judgment on count 2 of the indictment.

7. The court admitted incompetent evidence against defendant as offered by the United States.

8. The court excluded competent evidence offered by appellant.

9. The court erroneously instructed the jury on questions of law relating to count 2 and count 3 of the indictment.

10. The court erred in refusing to give appellant's requested instructions 3, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 19, 22, 24, 31, 33, 34, 35 and 37.

11. The court erroneously instructed the jury on (a) reasonable doubt, (b) circumstantial evidence, (c) definition of a principal in crime, (d) what constitutes one an aider and abettor, (e) that the third count of the indictment charged more than a conspiracy to defraud the United States.

12. The court erred in denying appellant's motions for directed verdicts of not guilty on counts 2 and 3 of the indictment.

13. The court erred in limiting the cross examination of the witness Barral.

14. The court erred in denying the motion in arrest of judgment as to count 2 of the indictment.

15. The verdicts on counts 1 and 2 are inconsistent.

[Endorsed: Filed Mar. 19, 1945. [44]]

[Title of Court and Cause.]

NOTICE OF APPEAL

To the clerk of the above entitled court:

1. Name and address of appellant: Julio Rodriguez c/o United Fruit Company, San Francisco, California.

2. Names and address of appellant's attorneys: Herbert Resner and George R. Anderson, 544 Market Street, San Francisco, California.

3. Offense:

First Count: Title 18, U. S. C. A., Sec. 80—Charge that appellant did make a false and fraudulent statement within the jurisdiction of the War Shipping Administration with the intention to defraud the government of the United States.

Second Count: Title 18, U. S. C. A., Sec. 80—Appellant was charged with covering up and concealing by a trick, scheme and device a material fact within the jurisdiction of the War Shipping Administration of the United States with the intention to defraud the government of the United States.

Third Count: Title 18, U. S. C. A., Sec. 88—Appellant was charged with a conspiracy to perpetrate the offenses described in Counts I and II.

4. Date of Judgment: March 19th, 1945.

5. Description of judgment or sentence:

First Count: Sentenced to prison term of 2 years.

Second Count: Sentenced to prison term of 2 years concurrent with First Count.

Third Count: Sentenced to prison term of 2 years consecutive to terms of First and Second Counts.

6. Prison where appellant now confined: County Jail, City and County of San Francisco, San Francisco, California.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment above mentioned, and the whole thereof, and from [45] the orders denying my motions in arrest of judgment and for a new trial, and the whole thereof, said judgment and orders being made and entered on March 19th, 1945, this appeal being based upon the grounds set forth below:

Dated at San Francisco, California, March 23rd, 1945.

JULIO RODRIGUEZ,

Appellant.

GROUND OF APPEAL

1. The verdict of guilty and judgment are contrary to the evidence.

2. The evidence is insufficient to support the verdict of guilty and the judgment.

3. The trial Court erred in denying various instructions requested by appellant.

4. The verdict and judgment are contrary to law.

5. The trial Court erred in denying appellant's motions for a directed verdict of acquittal, said motion being made and the grounds specified on the conclusion of the government's case, and being renewed on the close of all the evidence in the case.

6. The trial Court erred in its rulings in admitting into evidence various oral and documentary evi-

dence over the objections of appellant, which objections were good and substantial in point of law.

7. The trial Court erred in denying appellant's motions in arrest of judgment and for a new trial, and to dismiss the first and second and third counts of the indictment.

Dated at San Francisco, California, March 23rd, 1945.

ANDERSEN & RESNER,
HERBERT RESNER,
Attorneys for Appellant. [46]

Receipt of a copy of the within Notice of Appeal and Grounds in support thereof is hereby admitted this 24th day of March, 1945.

FRANK J. HENNESSY,
United States District
Attorney.

By JAMES E. BURNS,
Special Attorney
War Fraud Section.

[Endorsed]: Filed Mar. 24, 1945. [47]

District Court of the United States, Northern District of California, Southern Division

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 2nd day of April, in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Louis E. Goodman, District Judge.

[Title of Cause.]

ORDERED BILL OF EXCEPTIONS BE FILED
IN 40 DAYS WITH 15 DAYS TO ANSWER

This case came on regularly this day for hearing as to record on appeal. Valentine C. Hammack, Esq., Special Assistant Attorney General, was present on behalf of the United States. Leo Friedman, Esq., appeared as attorney for defendants Fernand Chevillard and George Patron; and H. Resner, Esq., appeared for defendant Julio Rodriguez. After hearing the attorneys, it is ordered that the Bill of Exceptions be filed in 40 days, with 15 days to answer. [48]

In the Southern Division of the United States District Court, for the Northern District of California.

No. 29193-G

UNITED STATES OF AMERICA,

Plaintiff and Appellee,

vs.

FERNAND CHEVILLARD and GEORGE
PATRON,

Defendants and Appellants.

ASSIGNMENT OF ERRORS OF APPELLANTS
CHEVILLARD AND PATRON

Fernand Chevillard and George Patron, defendants and appellants in the above cause, having each appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and sentence entered in the above cause against each of them and having duly given Notice of Appeal as provided by law, now, each for himself and jointly and severally, make and file the following Assignment of Errors herein, upon which each of said defendants will apply for a reversal of said judgment and sentence upon appeal, and each of said defendants says that in the record and proceedings in the above entitled cause there is manifest error in the following particulars, to wit:

1.

That the above entitled court erred in its order overruling the demurrers of each of said defendants

to each count of the indictment herein, to which ruling and order each of said [49] defendants duly excepted. (Exception No. 1.)

2.

The court erred in denying the motion of each defendant for a directed verdict of not guilty upon Counts Two and Three of the indictment, which said motions were made at the close of the government's case, each motion being made upon the ground that the evidence introduced by the Government was and is insufficient to support either a verdict or a judgment of guilty as to each defendant upon each of said counts and that no offense sought to be charged in each of said counts of the indictment had been proved by the Government as against the defendant Chevillard or as against the defendant Patron. The court denied each of said motions for directed verdicts to which ruling of the court, each of said defendants duly excepted. (Exception No. 28.)

3.

The court erred in denying the motion of each defendant for a directed verdict of not guilty upon Counts Two and Three of the indictment, which motion was made at the close of all the testimony and evidence in the case. Each of said motions on behalf of each defendant was made upon the ground that all of the evidence introduced in the case was and is insufficient to support either a verdict or judgment of guilty as to each count and that no offense sought to be charged in each count of the indictment had been proved by the evidence as against the de-

fendant Patron or against the defendant Chevillard. The Court denied each of said motions for directed verdicts to which ruling of the court each of said defendants excepted. (Exception No. 29.)

4.

That the evidence in the case was and is insufficient to establish the offense set forth in Count Two of the indictment as against the defendant Chevillard or against the defendant [50] Patron.

5.

That the evidence introduced in the case was and is insufficient to establish the offense set forth in Count Three of the indictment as against the defendant Chevillard or against the defendant Patron.

6.

That the court erred in refusing, on motion and request of defendants, to direct Government witness, Elroy Hinman, during the course of his cross examination, to produce the books of the Ed Heuck Company, which contained a record of what was billed against the United Fruit Company, War Shipping Administration, as more fully appears as follows: The witness had testified that he was manager of the Ed Heuck Company and had supervision of the sending of the meat to the Sea Perch and that such meat was 17,000 pounds less than the amount shown in the receipt marked as Government's Exhibit 5; that the books of said company contained a record of what was billed against the United Fruit Company, War Shipping Administration, together with

the quantity and amount of deliveries that the bill represents; that such books were under his general supervision.

Mr. Friedman: Might I ask that the witness be instructed to produce the books?

The Court: I do not know that there is any reason for the granting of that.

Mr. Hammack: To which I object, as to what the books show in regard to billing; it would be improper cross examination.

The Court: Unless some more adequate reason is shown I will deny it.

Mr. Friedman: I will wind this up by stating that while this witness ordered 66,000 pounds of meat to be placed upon [51] the various trucks and ordered 17,000 pounds, approximately, placed in one particular truck, and that this witness said as far as he knows the only amount of meat that was made up and delivered to the Sea Perch that day was the 66,000 pounds less the 17,000 pounds, that even for the purpose of testing this witness' recollection or even impeaching his testimony I have a right to see the books that are under his supervision.

The Court: I do not think there is any materiality to your point. I will sustain the objection.

Mr. Friedman: Note an exception. (Exception No. 5).

7.

That the court erred in limiting the cross examination of the witness Dean Heuck, produced by the Government, as more fully appears as follows. The witness had testified that he was a general partner

of the company that supplied the meat to the Sea Perch.

Exception No. 6

Q. I see. Who did you bill for this meat?

Mr. Hammack: I object to that, may it please Your Honor, on the ground it is improper cross examination.

The Court: I will sustain the objection. An exception may be noted on behalf of all defendants.

Exception No. 7

Mr. Friedman: Q. Was your company ever paid for the meat?

Mr. Hammack: Same objection, your Honor.

The Court: Same ruling, same exception.

8.

The court erred in limiting the cross examination of the witness Pierre Barral, produced by the Government, which more fully appears as follows: [52]

Exception No. 9

Q. What was it you pleaded guilty to?

Mr. Hammack: I object, your Honor. The indictment speaks for itself.

Mr. Friedman: I am trying to find out what this man thought he pleaded guilty to.

Mr. Hammack: It is not a question of what he thought he pleaded guilty.

The Court: I sustain the objection. I think that is a legal question.

Mr. Friedman: Exception, your Honor.

The Court: Exception noted.

9.

That the court erred in limiting the cross examination of the witness Pierre Barral, produced by the Government, as more fully appears as follows:

Exception No. 10.

Q. You pleaded guilty, but you don't know how many charges you pleaded guilty to, is that right?

A. No, I don't know how many charges.

Q. Do you know how long you could be sent to jail?

Mr. Hammack: I certainly object to that as improper cross examination, immaterial, irrelevant, and incompetent.

The Court: I will sustain the objection.

Mr. Friedman: Might I call the Court's attention to this?

The Court: I do not think it is necessary to argue this. You have made your objection and I have ruled on it.

Mr. Friedman: May we have our exception.

The Court: Yes.

10.

The court erred in admitting in evidence, during the [53] direct examination of Dallas A. Johnson, a witness produced by the United States, the signed statement of the defendant Fernand Chevillard, as against the defendant Chevillard only, as more fully appears as follows:

Exception No. 11

Mr. Hammack: At this time we will offer this statement in evidence as against Mr. Chevillard only.

Mr. Friedman: I will object to it on the ground that it is a mere narrative of past events, and that neither of the offenses charged in this indictment has been established and therefore that extra judicial statements are inadmissible until the corpus delicti has been established.

The Court: I will overrule the objection, and an exception may be noted.

Mr. Friedman: It will be understood that my objection is as to each count of the indictment?

The Court: Your objection goes to the introduction of the exhibit, doesn't it?

Mr. Friedman: In so far as each count is concerned; in other words, I wish my objection to appear as three objections, one to introducing it in support of the first count, the second count, and third count of the indictment.

The Court: I have never heard of that being done, but if you wish it you can have three objections and I will make three orders overruling them and three exceptions.

Mr. Friedman: Yes, because it may be inadmissible on one count and not admissible on the other.

The Court: All right.

(The statement of Fernand Chevillard was marked U. S. Exhibit 18.)

11.

That the court erred in refusing to grant the motion [54] of each defendant to strike out that portion of the testimony given by the witness Pierre Barral, which said testimony was in substance, that a day or two before the Sea Perch reached port on December 28, 1944, he had a conversation with the defendant Rodriguez, out of the presence of either Chevillard and Patron, in which conversation Rodriguez stated he had some meat on board the ship, about 20,000 pounds, that nobody knew about, that he, Rodriguez, asked the witness if there was any way they could sell the meat.

The motion to strike said testimony was made upon the ground that such testimony was not binding on either of the defendants in that it was an act, transaction and conversation occurring out of their presence and which they had never authorized or ratified and upon the further ground that it did not tend to prove any charge or element of any of the charges set forth in the indictment.

The court denied the motion to strike such testimony to which each defendant duly excepted. (Exception No. 15).

12.

That the court erred in refusing to grant the motion of each defendant to strike out certain portions of the testimony given by the witness Brandt-Nielsen as more fully appears as follows:

Exception No. 18

Mr. Friedman: Now, referring to the testimony of Brandt-Neilson, I move to strike out the portion

of Brandt-Neilson's testimony in which he testified that on or about January 22, in the room of Rodriguez on board the Sea Perch he had a conversation with Mr. Rodriguez in which Mr. Rodriguez discussed with him the question of economy and waste on ships, and that if stewards did not indulge in so much waste there would be a great deal of saving to the company in meat, and in which conversation he further stated that Mr. Rodriguez stated that [55] he had a large amount of meat and had gone around to see the manager of a meat company, and that the meat company had ought to pay him, or that he could sell the manager of the meat company, and then your Honor will recall Mr. Brandt-Neilson testified there was some mention of a hundred dollars, but that he could not make out what it was all about; he did not know whether he was to get it or somebody else, or who was either to pay it or receive it. I move to strike out the testimony on the ground it certainly has nothing to do with the defendants in this case and does not tend to establish any essential element of any count of this indictment, and it is certainly not binding on either of these defendants; that was a conversation occurring out of their presence, and there was no evidence that they had any knowledge thereof, that they ever authorized or sanctioned the making of such statements by Mr. Rodriguez, or that they were subsequently apprised thereof, or it was ratified or conformed by them in any way.

13.

That the court erred in refusing to strike out certain portions of the testimony of the witness Ham-

burg, when called on behalf of the United States as more fully appears as follows:

Exception No. 19

Mr. Friedman: I move to strike out the testimony of Mr. Hamburg, who testified, as I recall it, that he was the chief checker, and that he was present and talked to Mr. Rodriguez, in which conversation Mr. Rodriguez signed a sheet showing that a certain amount of meat had been delivered to the Sea Perch. You will recall on January 23rd he testified, Mr. Hamburg did, that he prepared that tag for signature, and that he requested Mr. Rodriguez to sign it, and that Rodriguez signed it upon his statement that there was that amount of meat that had been delivered. Certainly that is not an act in furtherance of the [56] conspiracy, and it certainly is not an act that is involved in Count 1 or Count 2 of the indictment, because under this witness' own testimony, Mr. Hamburg's own testimony, Rodriguez signed upon his representation this tag for the United Fruit Company, and he, as the Government contends, is the agent and the alter ego of the War Shipping Administration, and procured the signing of this tag by Mr. Rodriguez. It is certainly not a false statement as outlined by Count 1 of the indictment, and it is certainly not a trick or scheme to cover up that fact. I can conceive that if this tag had been given to the Chief Clerk and prepared by Rodriguez and signed by him and given to the Chief Clerk, that there probably would be some basis for the assumption that Rodriguez knew it was false and was filing

it for the purpose of concealing facts from the War Shipping Administration, but such is not the evidence in the case. This is the Government's own evidence, that is not ours, and the Government's own proof has established that the tag was not prepared by Rodriguez upon the representation of an agent of the War Shipping Administration that that amount of meat had been placed on the ship, and that it was a routine matter, that these things were done in that way at all times. So I move to strike out the testimony and the tag (Exhibit 9) signed by Rodriguez on the ground that it does not prove or tend to prove the elements of the offense set forth in Count 1 of the indictment; that it does not prove or tend to prove the elements of the offense as set forth in Count 2, and does not prove or tend to prove the offense set forth in the third count of the indictment; and upon the further ground that it was a transaction outside of the presence of these defendants, which they had no knowledge of prior to or subsequent to the time of its commission, and they never authorized, ratified or confirmed or had any knowledge thereof.

I will submit that motion. [57]

The Court: The motion will be denied and an exception noted.

14.

That the court erred in refusing to strike out Government's Exhibit No. 18, the statement signed by the defendant Chevillard, which said motion was made upon the ground that the manner in which the statement was procured was a denial of due process

of law and in violation of the Fifth Amendment to the Constitution of the United States, which motion was denied by the court and to which the defendant Chevillard duly noted an exception. (Exception No. 21).

15.

That the court erred in refusing to strike out Government's Exhibit No. 5, a delivery tag prepared by the Ed Heuck Company and signed by the defendant Brandt-Neilsen which tag showed the delivery by the Ed Heuck Company to the S. S. Sea Perch of 64,793 pounds of meat. Said motion was made on the ground that such document was not binding on either of the defendants, that they had no knowledge thereof, had never authorized or procured the signing of any such tag by a representative of the War Shipping Administration, or United Fruit Company and that neither of said defendants had ratified or confirmed that fact. The court denied such motion, to which each defendant duly excepted. (Exception No. 23).

16.

That the court erred in denying the motion of each defendant to strike out Government's Exhibit No. 9, a delivery tag similar to Government's Exhibit No. 5, but which was signed by the defendant Rodriguez. The court denied said motions to which ruling each of said defendants noted an exception.

17.

That the court erred in instructing the jury as follows: [58]

“I will say, in the first place, there are two classes of evidence recognized and admitted in courts of justice, upon either of which juries may lawfully find an accused guilty of crime. One is direct or positive testimony of an eye witness to the commission of the crime, and the other is proof in testimony of a chain of circumstances pointing sufficiently strong to the commission of the crime by the defendant, and which is known as circumstantial evidence. Such circumstantial evidence may consist of statements by the defendant, plans laid for the commission of the crime, in short, any acts, declarations or circumstances admitted in evidence tending to connect the defendant with the commission of the crime. There is nothing in the nature of circumstantial evidence that renders it less reliable than the other class of evidence.

“If upon consideration of the whole case you are satisfied to a moral certainty and beyond a reasonable doubt of the guilt of the defendants, or any of them, you should so find, irrespective of whether such certainty has been produced by direct evidence or by circumstantial evidence. The law makes no distinction between circumstantial and direct evidence in the degree of proof required for conviction, but only requires that the jury shall be satisfied beyond a reasonable doubt by evidence of either the one character or the other, or both.

“In cases of circumstantial evidence facts should be proven which are not only consistent with the guilt of the defendant but inconsistent with any other reasonable hypothesis.”

Each defendant objected and noted an exception to the giving of said instruction upon the ground that it did not contain the element that if the circumstantial evidence was equally consistent with the hypothesis of innocence as that of guilt, the finding of the jury must be in favor of the defendant. (Exception No. 30). [59]

18.

That the court erred in instructing the jury as follows:

“Whoever directly commits any act constituting an offense defined in any law of the United States, or whoever aids, abets, counsels, induces or procures its commission, is a principal and to be prosecuted and punished as such. In other words, whoever directly does the thing that is a violation of the law is a principal, as is also one who either aids, abets, counsels, induces, or procures the doing of that act.

“The word “aid” means to help, to support, or to assist.

“The word “abet” means to instigate or encourage by aid or countenance, or to contribute.

“It is essential to the guilt of a person charged with aiding and abetting the commission of the crime that such person’s acts shall have contributed to the effectuation of the offense. It is sufficient if it facilitated the result and rendered the accomplishment of the offense more easy.

“A person who knowingly renders assistance, cooperation, and encouragement in the commission of an offense is one who aids and abets in the commission.”

Each defendant objected and noted an exception to the giving of the foregoing portion of the charge upon the ground that it did not contain the element that the person accused of aiding and abetting another in the commission of a crime, must have a criminal intent and that such act of aiding and abetting must be done with the intent of having the ultimate act actually done and accomplished. (Exception No. 31).

19.

That the court erred in instructing the jury as follows:

“So that in the third count of the indictment there are [60] three elements alleged, namely, confederating and conspiring together to cause the presenting of a false claim and securing payment from the United States therefor, and a conspiracy to commit the acts specifically charged in the first and second counts of the indictment.”

Each defendant objected and noted an exception to the giving of the foregoing charge as more fully appears as follows:

Exception No. 32

I likewise desire to note an exception to your Honor's instruction to the jury as to the elements involved in the third count of the indictment. Your Honor instructed the jury that the third count of the indictment involved a conspiracy to commit several acts, to-wit, to defraud the United States, to make a false representation to the War Shipping Administration, to resort to a trick, scheme or device for the purpose of concealing a material fact from the War

Shipping Board, etc. The indictment, as I read the third count, states specifically that the defendants are charged with the offenses, to-wit, to defraud the United States in violation of title 18, USCA, section 80, and that the balance of the indictment simply alleges the manner and means in which they were to defraud the United States, and that the portion that relates to the false claim and resorting to the trick and device of getting a receipt to be signed are not the things that they are charged with conspiring, but they are merely stated as the means whereby the sole object of the conspiracy, to-wit, to defraud the United States, was accomplished. As I stated, I desire to note an exception.

26.

That the court erred in refusing to give defendants' requested instruction No. 3, to which refusal each defendant duly excepted. Said instruction No. 3 reads as follows: [61]

Requested Instruction No. 3

Two of the defendants in this case, Pierre Barral and Lucien L. De Angury have taken the stand as witnesses in behalf of the Government. Each of these witnesses has pleaded guilty to the charges contained in the indictment. In considering the credibility to be given to each of these witnesses you have a right to take into consideration the fact that each of these men has pleaded guilty and is awaiting the pronouncement of judgment. You have a right to consider these facts in determining the bias that each of these witnesses may have against their co-defendants and in determining whether or not these

two men are testifying under the expectation of immunity or leniency as to the charges to which they have pleaded guilty. If you determine that either of these men are testifying in favor of the government due to any bias they may have against any other defendant in the case or under the expectation of any immunity or leniency, you have a right to consider such fact in determining the credibility of each such witness.

21.

That the court erred in refusing to give defendants' requested instruction No. 11, to which refusal each defendant noted an exception, which requested instruction reads as follows:

Requested Instruction No. 11

By the second count of the indictment on file herein the defendants are charged with knowingly, wilfully, unlawfully and feloniously, covering up and concealing by a trick, scheme and device a material fact within the jurisdiction of the War Shipping Administration and that the material facts so covered and concealed by such trick and scheme and device are as follows: that the defendants knew that the War Shipping Administration had ordered from the Ed Heuck Company approximately 64,793 pounds of [62] meat, to be delivered by the said Ed Heuck Company to the said War Shipping Administration; that possessing such knowledge the defendants diverted and withheld from said shipment approximately 17,832 pounds of said meat with the intent and for the purpose of converting the same to their

own use and with the intent to defraud the said War Shipping Administration, the defendants covered up and concealed the fact of said diversion and conversion of approximately 17,832 pounds of meat by the trick, scheme and device of signing and causing to be signed and issuing and causing to be issued by the said War Shipping Administration a receipt to the said Ed Heuck Company for approximately 64,793 pounds of meat.

Before you can find either the defendant Chevillard or the defendant Patron guilty on this second count of the indictment you must be satisfied from the evidence to a moral certainty and beyond a reasonable doubt that such defendant did in fact sign or caused to be signed or issue or cause to be issued by the War Shipping Administration said receipt for approximately 64,793 pounds of meat. If the evidence established that the defendant Chevillard did not sign or caused to be signed and was not instrumental in having the said War Shipping Administration issue or caused to be issued such receipt, you must return a verdict finding the defendant Chevillard not guilty. If the evidence established that the defendant Patron did not sign or caused to be signed and was not instrumental in having the said War Shipping Administration issue or caused to be issued such receipt you must return a verdict finding the defendant Patron not guilty. If you have a reasonable doubt as to whether the defendant Chevillard or the defendant Patron signed or caused to be signed or was instrumental in having the War Shipping Administration issue or cause to be issued

such receipt, you must resolve such doubt in favor of such defendant and acquit him [63] on the second count of the indictment.

22.

That the court erred in refusing to give defendants' requested instructions No. 13 and No. 14, to which refusal each defendant duly excepted. That said requested instructions read as follows:

Requested Instruction No. 13

Before you can find the defendant Chevillard guilty on count two of the indictment you must be satisfied to a moral certainty and beyond a reasonable doubt that the defendant Chevillard signed and caused to be signed, or was instrumental in having the War Shipping Administration issue or cause to be issued a receipt to the said Ed Heuck Company for approximately 64,793 pounds of meat. If the evidence established that some person other than the defendant Chevillard issued or caused to be issued said receipt or was instrumental in having the War Shipping Administration issue or cause to be issued said receipt, but that the defendant Chevillard had no knowledge thereof, and did not abet, counsel, command, induce or procure such other person to do such act, you must return a verdict herein finding the defendant Chevillard not guilty on count two of the indictment.

Requested Instruction No. 14

Before you can find the defendant Patron guilty on count two of the indictment you must be satisfied to a moral certainty and beyond a reasonable doubt

that the defendant Patron signed and caused to be signed, or was instrumental in having the War Shipping Administration issue or cause to be issued a receipt to the said Ed Heuck Company for approximately 64,793 pounds of meat. If the evidence established that some person other than the defendant Patron issued or caused to be issued said receipt or was instrumental in having the War Shipping Administration issue or cause to be issued said receipt [64] but that the defendant Patron had no knowledge thereof, and did not abet, counsel, command, induce or procure such other person to do such act, you must return a verdict herein finding the defendant Patron not guilty on count two of the indictment.

23.

That the court erred in refusing to give defendants' requested instruction No. 15 to which refusal each defendant duly excepted. Said requested instruction No. 15 reads as follows:

Requested Instruction No. 15

If you should find from the evidence that either the defendant Chevillard or the defendant Patron co-operated with some other defendant in this case for the purpose of finding a place to store approximately 17,000 pounds of meat that had been sent by the Ed Heuck Company to the War Shipping Administration and if you should also find that either of these defendants likewise co-operated with some other defendant for the purpose of moving a truck in which said 17,000 pounds of meat was being transported, these facts even of themselves will not be

sufficient in justifying you to return a verdict finding either Chevillard or Patron guilty of the offenses set forth in count one or count two of the indictment. Before either of these defendants can be found guilty on either count one or count two of the indictment the evidence must establish to a moral certainty and beyond a reasonable doubt that they had actual knowledge that the War Shipping Administration was going to be called upon to sign or caused to be signed or issue or caused to be issued the alleged receipt for approximately 64,793 pounds of meat. If the defendants Chevillard and Patron did not know of this fact and did not act by way of counsel, advice, assisting or instigating the signing and issuing of such receipt you must find the defendants Chevillard and Patron not guilty on counts one and two [65] of the indictment, no matter what else you may find the defendants did do relating to the matters and things set forth in the indictment.

24.

That the court erred in refusing to give defendants' requested instruction No. 37, to which refusal each defendant duly excepted. Said requested instruction 37 reads as follows:

Requested Instruction No. 37

When independent facts and circumstances are relied upon to establish by circumstantial evidence, the guilt of a defendant, each material, independent fact or circumstance in the chain of facts relied upon must each be established to a moral certainty and

beyond a reasonable doubt. If in the chain in the facts of circumstantial evidence any one or more of the material facts in such chain are not established to a moral certainty and beyond a reasonable doubt, the entire proof fails and a verdict of not guilty must be returned.

Wherefore, for the many manifest errors committed by the court each defendant, through his attorney, prays that said sentences and judgments of conviction be reversed, and for such other and further relief as may seem meet and proper.

Dated: May 10, 1945.

LEO R. FRIEDMAN,
Attorney for Defendants
Chevillard and Patron.

Copy of the foregoing Assignment of Errors received this 12th day of May, 1945.

VALENTINE C. HAMMACK,
(m.c.a.)

Special Assistant to the
Attorney General.

[Endorsed]: Filed March 12, 1945. [66]

[Title of District Court and Cause.]

PRAECIPE

To the Clerk of Said Court:

Sir:

Please prepare transcript on appeal to include the following pleadings, papers, motions, proceedings and orders in the above entitled cause:

1. Indictment.
2. Demurrers of Chevillard and Patron to indictment.
3. Order overruling demurrers and exception thereto.
4. Minutes of the trial.
5. Verdicts of the jury.
6. Motion for new trial and order denying same.
7. Motion in Arrest of Judgment and Order denying same.
8. Sentence and judgment.
9. Notices of appeal.
10. Assignment of Errors.
11. Bill of Exceptions and Order settling same.
12. Order of April 2, 1945, extending time for preparing, lodging, amending and settling Bill of Exceptions.
13. This Praeipe.

LEO R. FRIEDMAN,

Attorney for Defendants.

Copy of the foregoing Praeipe received this 12th day of May, 1945.

VALENTINE C. HAMMACK,

(m.c.a.)

Special Assistant to the
Attorney General.

[Endorsed]: Filed May 12, 1945. [67]

At a Stated Term, to wit: The October Term 1944, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Tuesday the fifteenth day of May in the year of our Lord one thousand nine hundred and forty-five.

Present: Honorable Francis A. Garrecht, Senior Circuit Judge, Presiding; Honorable Clifton Mathews, Circuit Judge; Honorable William Healy, Circuit Judge.

No. 29193-S

No. 11022

JULIO RODRIGUEZ,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

**ORDER EXTENDING TIME TO SETTLE AND
FILE BILL OF EXCEPTIONS, AND TO
FILE ASSIGNMENTS OF ERROR.**

Upon consideration of the petition of appellant for an extension of time within which to file his bill of exceptions, and of the affidavit of Mr. Herbert Resner, counsel for appellant, in support thereof, and by direction of the Court,

It Is Ordered that the time within which appellant may have settled and filed his bill of exceptions,

and file his assignments of error be, and hereby is extended to and including June 30, 1945.

(Certification.)

[Endorsed]: Filed May 16, 1945. [68]

[Title of District Court and Cause.]

**BILL OF EXCEPTIONS OF APPELLANTS
CHEVILLARD AND PATRON**

Be it remembered that heretofore the Grand Jury of the United States, in and for the Northern District of California, Southern Division, did present and return into and before the above entitled court, its indictment against the above named defendants and Julio Rodriguez, Pierre Francoise Barral, Clarence Valentine Jacky, Lucien L. De Angury, and Angelo Italo Vincenzini.

Exception No. 1

That after the return of said indictment, as aforesaid, said defendant Chevillard and Patron duly and seasonably filed on February 8, 1945, their joint and several demurrer to said indictment and to each count thereof, and thereafter the above entitled court made its order overruling and disallowing said demurrer and the whole thereof, to which ruling [69] each of said defendants then and there duly excepted.

That thereafter each of said defendants named in said indictment was duly arraigned as shown in the record on file in the above cause and as so shown

by said record the defendants Chevillard, Patron, Rodriguez, Jacky and Vincenzini did enter their pleas of not guilty to each indictment and each and every count thereof, and the defendants Barral and De Angury did enter their pleas of guilty to said indictment and each count thereof.

And be it further remembered that the above entitled cause being at issue the same came on regularly for trial before the Honorable Louis E. Goodman, United States District Judge, on March 6, 1945, as to all of said defendants who had entered pleas of not guilty to said indictment. Whereupon a jury was duly empanelled and sworn to try the cause. The United States being represented by Valentine C. Hammack, Esq., Special Assistant to the United States Attorney General, the defendants Chevillard and Patron being personally present and represented by Leo R. Friedman, Esq., the defendants Julio Rodriguez being personally present and represented by Herbert Resner, Esq., the defendant Vincenzini being personally present and represented by A. J. Zirpoli, Esq., and the defendant Jacky being personally present and represented by Sol A. Abrams, Esq., and E. C. Mahoney, Esq.

Thereupon Valentine C. Hammack, Esq., made an opening statement to the jury as to the matters the plaintiff expected to prove.

Thereupon the United States, to maintain the issues on its part to be maintained, called the following witnesses.

STIPULATION

It was stipulated between the plaintiff and said defendants on trial that a certain contract then offered in evidence by the United States was executed by the parties whose [70] names appeared upon said contract.

Exception No. 2

Appellants Chevillard and Patron objected to the admission in evidence of said contract on the ground that it was *res inter alias atea* in that it involved some alleged contractual obligation between two strangers to the matter on trial and involved a transaction with which the defendants Chevillard and Patron were not a party and therefore were not bound by it and that said contract did not constitute competent evidence against either Chevillard or Patron. The court overruled said objection and an exception was noted by each of said defendants.

Said contract was admitted in evidence as U. S. Exhibit No. 1.

Testimony of George Halstead for the United States.

GEORGE HALSTEAD

produced as a witness on behalf of the United States, having been first duly sworn, testified in substance as follows:

Direct Examination

By Mr. Hammack:

I live at 645 Faxon Avenue, San Francisco. I am port steward for the United Fruit Company, which operates the steamship *Sea Perch*. The *Sea Perch* was in commission in January, 1945, and was here in port in San Francisco in September of 1944. It returned to San Francisco about December 28, 1944. Julio Rodriguez was the chief steward on the *Sea Perch*. (Here witness identifies defendant Julio Rodriguez.) Pierre Barral was the assistant steward on the *Sea Perch*. The duties of the port steward are the employment and supervision of the steward's department, the cook, messroom, waiters and everyone else in the catering department, and also the supervision of all stores, food stores, supervision and working of stores aboard any ship. [71] Upon the return of the ship to port it is the duty of the ship's steward to return an inventory showing what stores he has on hand at the completion of his trip. Upon the completion of the *Sea Perch's* trip, upon its arrival in San Francisco, upon December 28, 1944, the chief steward submitted an inventory of the stores that he had left on hand. I personally went aboard the ship but I did not check the inventory. Upon receiving the inventory from the chief steward I conferred with him regarding his order for the coming voyage, what requirements he needed for the coming voyage and then I go through his ship for cleanliness and condition of existing stores remaining on board the

ship to see if they are in proper condition to go out again. In ordering stores for a voyage the requisition is based upon the number of persons who may be on that particular voyage and the length of the voyage. In making a requisition for meat there is a poundage allotment to be used per number of people and per number of days.

The document you show me, consisting of two sheets, is the steward's department account for stores of the United Fruit Company and on it is the bookkeeping of the stores on hand for the last voyage and what is purchased or the total of stores on board—the consumption for that voyage and what he has on hand and in the last item is a requisition for the next voyage. These two sheets apply to meat and dairy products. It is the chief steward's duty to make up these sheets. It is made up while the chief is at sea. I could not say whether chief steward Rodriguez did it, but it is his duty to make it out. I first saw this inventory on board the ship. It was handed to me with the ship's papers when the ship arrived in port. It was for our records. The chief steward handed over this inventory. [72]

Referring to the inventory, the word "unit" on it means what is defined under the heading of that column, for instance pounds. In this particular column where it says "units on hand when the voyage ended," that is what the ship had on hand coming in. The figures show what was on hand on the ship at the time the ship came in and on the other part of that paper is what the steward

estimates what he will need for the next voyage.

Upon receipt of this inventory pertaining to meat I passed it to the purchasing department for purchase, to make up a purchase order more or less upon the lines indicated in this order.

(Thereupon the United States offered the two sheets testified to by the witness in evidence, and upon objection being made said sheets were offered and received in evidence as U. S. Exhibit No. 2 only against the defendant Rodriguez and were marked as Exhibits for Identification as against all other defendants on trial.)

I had a conversation with the defendant Rodriguez, prior to January 23, in connection with the meat to be delivered to the Sea Perch. The conversation took place in my office and there were present Julio Rodriguez and Pierre Barral and my secretary. The conversation took place about three days previous to storing that particular ship—about the 20th of January.

Exception No. 3

“Q. What conversation did you have at that time and what was said and by whom?

“Mr. Friedman: Now, if your Honor please, I will object on behalf of the defendants Chevillard and Patron that it calls for a conversation out of the presence of either or both of them, nothing to show that they had any knowledge thereof, or authorized or participated therein, and it is not binding on them.

“The Court: I take it that you are going to connect up all of these matters?

“Mr. Hammack: Yes. [73]

“The Court: I presume it is in my discretion as to whether I rule the testimony should be limited to one defendant and then by motion later on allowed as to all defendants, or whether or not it should be allowed subject to a motion to strike, and I think it will be in the interest of orderly procedure to let it in, and I will overrule the objection, and counsel may make a motion to strike it later on, and if the proper foundation has not been laid it may be stricken out. The record will show that each of the counsel's objections except counsel for the defendants who are named as participating in the conversation have been overruled subject to a motion to strike if it is not connected up.”

(Witness continuing): The main things that were said was—we set a date for the storing of the ship. I think the date set was the 22nd, 23rd and 24th. We set three days for loading that ship. The first day we were going to take what we term dry stores, groceries, etc. The second day we were going to take the meat and perishable items and the third day close out the short items. I definitely set the date that the meat would be delivered at the ship. The meat was to be delivered on the 23rd or the 24th, one of those two dates.

Cross Examination

(By Mr. Friedman)

I did not check the stores on the Sea Perch when she came into port. I received this inventory and requisition as part of the ship's papers. I did not have anyone check the stores on the Sea Perch. I took Mr. Rodriguez's papers as being a correct check of the stores that had not been used on that voyage.

(By Mr. Zirpoli)

The documents that were placed in evidence were offered to me upon the date of the ship's arrival in San Francisco, about December 28. The conversations that I have just mentioned about the date set for storing the ship was January 20.

(By Mr. Resner)

I have been associated with the United Fruit Company [74] since 1924. I have known the defendant Rodriguez since 1930—the past fourteen years. He has had a good character from what I have known of him. My first acquaintance was back around 1930 when we made various trips together on the same vessel. I at that time was his superior on the ship. I would say that was about six months. In the interim I have seen him as various times when he shipped, after I was transferred to shore duty and his ship entered the port that he was in, which was sometimes on the East Coast and later on the West Coast and meeting

that ship in my capacity as port steward and checking that ship and paper work for that department. When I checked this ship in December, 1944, I did so in the same way that I would check the ships during all of the years that I had shore duty and he was chief steward aboard different vessels. In December, 1944, when the Sea Perch returned she docked in San Francisco. It was aboard ship that Mr. Rodriguez gave me this inventory. Part of that inventory was taken when the vessel left. This voyage which ended in December, 1944, commenced on October 30, 1944. The vessel was gone in November and December. When the vessel departed on October 30, an inventory was prepared of what went aboard the vessel. The inventory in evidence is an inventory of what went aboard the vessel when she left in October. A copy of that went with the vessel. The items included what were already on the ship from the prior journey together with what I put aboard in October. When the vessel came back in December there is a column which indicates what was left aboard the ship. That column was filled in or supposed to be filled in by Rodriguez and handed to me. Column 1 indicates that there were certain supplies on the ship. That column is designated as "on hand at the end of the voyage." I went to the storeroom and took a general look to see the condition of the storeroom and condition of the [75] stores remaining aboard but I did not check what was remaining on the ship with the inventory. On various occasions I did take an inventory and I did not check it on

every item. On the check I made in December I looked to see whether the stores were fit for another voyage or whether they had become contaminated by weevils or other bugs aboard ship. If they were fit for human consumption. I found everything satisfactory. That is what I meant by condition of store.

I had this meeting with Mr. Rodriguez and Mr. Barral in my office about January 20, 1945, at which time I discussed with Rodriguez the date upon which I would load the vessel. That is one of our ordinary duties and an ordinary thing to do. There was nothing unusual about that meeting or in Mr. Rodriguez coming to my office to discuss the date on which we would load the vessel. He either came to my office or I went to the ship. Rodriguez was required to discuss that matter with me, the date for storing the vessel.

Testimony of Harold Marchall for the United States

HAROLD MARCHALL

called as a witness on behalf of the United States, having been first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Hammack)

I am assistant purchasing agent of the United Fruit Company. The Sea Perch is operated by the United Fruit Company. All of the invoices presented to the United Fruit Company are ren-

dered to the United States of America, War Shipping Administration, United Fruit Company General Agents. All purchase orders are to United States of America War Shipping Administration.

My duties as assistant purchasing agent are that I purchase all supplies for ships that are handled or allocated to our company. The procedure is that the requisition or [76] inventory is brought into the purchasing department from the steward's department and then we proceed with the purchase of all the necessary supplies that are required by the ship. We arrive at the amount to be purchased for the ship from the inventory. What that amount is on the ship's requisition that comes from the steward's department to us is the amount used. The chief steward gives the paper to the port steward and the port steward sends them on in an order. He looks them over and the amount that is on the right hand side of the requisition is the amount we send for the next voyage. Referring to Government's Exhibit in Evidence 2, that is a requisition of the Sea Perch that we handled and I made purchases from. It was an inventory showing the amount of supplies on hand, when the Sea Perch returned to San Francisco on December 28. The column out here on the right side of the sheet is the one from which I placed my purchase order. That column is headed "supplies for next voyage." Upon receipt of this inventory and requisition I placed an order for certain meat with the Ed Heuck Company. The document captioned "W. S. 18,841, United States of America War Shipping Adminis-

tration, United Fruit Company, General Agent'' is an order I issued to the Ed Heuck Company for meat for delivery to the Sea perch. When this order was sent to the supplier it did not have any lead pencil notations on it. When the Ed Heuck Company received this order, they at times could not supply a certain type or a certain grade of meat which we have to make specifications for and that is the reason for the pencil marks on it. They called up that they could not supply a certain order and ask our authority to substitute, which we did. (The order referred to by the witness was then offered and received in evidence as U. S. Exhibit 3 against the defendant Rodriguez and was marked for identification against the remaining defendants.) [77]

Cross Examination

(By Mr. Friedman)

After the inventory leaves the hands of the chief steward the port steward has the authority to change the amount of the requisition. The inventory is given to the port steward with this requisition of the amount he needs for the next voyage. After the port steward invoices these papers he sends them on to us. Whether he changes them or not I don't know. After the requisition leaves the hands of the chief steward the port steward determines how much is actually going to be purchased.

(By Mr. Resner)

Referring to Government's Exhibit 2 the word "unit" in the requisition for the next voyage indicates the amount of different products that will be ordered by me from the different companies and pursuant to that this order which is Exhibit No. 3 was filled out by me and sent to the Heuck Company. I examined the requisition carefully and placed the order. It is the port steward's job to deal with what is on hand on the vessel. We only take the amount which is required for the next voyage and purchase that amount. I have no authority with regard to any action with which is on the ship when it comes back.

I know Mr. Rodriguez by sight.

(By Mr. Friedman)

As purchasing agent of the company it is not part of my duty to pay bills. That is the accounting end of the company. The bills are paid by the War Shipping Administration. I don't know whether the company I work for, first pay the bills and then the War Shipping Administration pays back that amount to them. I sign the orders I issue under the name of United States of America War Shipping Administration and I am instructed to have [78] the invoice rendered in the name of the War Shipping Administration. I do not know who actually pays the people who furnished these supplies, whether it is the company I work for or the War Shipping Administration.

Testimony of Elroy Hinman for the United States

ELROY HINMAN

produced as a witness on behalf of the United States having been first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Hammack)

I am manager of the Ed Heuck Wholesale Butcher Company, located at 522 Clay Street, San Francisco, and was such during the month of January, 1945. An order for meat was received from the War Shipping Administration for the Steamship Sea Perch in January of 1945. It is U. S. Exhibit No. 3 in evidence.

On January 16, 1945, I received a visit from two persons who represented themselves to be chief steward and assistant steward of a ship. It was between ten and two o'clock. Prior to that I received a telephone call from somebody. Following the telephone call, about 15 minutes later two persons came to my office. Of the two gentlemen who called I recognized the defendant Rodriguez as one of them. I had a conversation with these gentlemen in the office of Mr. Ed Heuck. Those present were myself, the man representing himself to be the chief steward, and his assistant. Rodriguez represented himself as the chief steward. I did not know his name at that time.

Exception No. 4

Q. At this time and place what was the conversation? What was said, and by whom?

Mr. Friedman: I will object on behalf of the defendants Chevillard and Patron to such conversation had out of their presence between other parties as not binding on them and not connected with them in any way. [79]

The Court: If it is not connected up I will strike it out on your motion later on. It is going to come into the record as against the particular defendants, so it becomes a mere matter of procedure in that way.

Mr. Friedman: Of course, I may not clearly have understood what you and other counsel discussed, but is this the correct understanding, that these conversations, transactions, and events that may have occurred between any witness and any one defendant are being admitted in the case as if the other defendants had objected to the materiality and binding effect on them, as if they had noted an exception to it and subsequently we are given the right to strike them out without the necessity of making the objections as we go along?

The Court: That is correct.

Mr. Friedman: As long as that is the understanding, I won't interrupt any more.

The Court: It is just a question of who makes the motion at the proper time, whether the Government makes the motion that it be introduced as to all defendants or the defendants introduce a motion to strike. I think it would be more orderly

the second way. You will be more interested, each of you, in the competency of the testimony as to your respective clients and in a better position to point out the nature of your motions.

Mr. Friedman: I just wanted to be sure that we wouldn't be in a position of not having objected to something.

The Court: The position is clear now.

The chief steward stated that he had or his company had placed with our company an order for some 36 or 38,000 pounds of beef, that they did not require that much beef on the ship, that there already was more than was reflected by their inventory and that up to 25,000 pounds of that beef might be diverted to some other use, that he was willing to furnish my company,—that he was willing to see that my company received receipts for the delivery of the entire order, but that up to 25,000 pounds of that order should not actually be delivered to the ship, that we were to bill the entire quantity as ordered and dispose of a portion not delivered for our mutual profit. Nothing was said as to what our mutual profit was to be, only that it was to be divided three ways between the chief steward and the assistant steward and myself. I stated that all our deliveries to the ships were for the account of the War Shipping [80] Administration, United States Government, that it would not be practicable to attempt to divert meat consigned to the Government to any other source. The chief steward and assistant steward both assured me that it would be a very simple operation, that

our bills would be receipted for as a complete delivery. I stated that we would have no means of disposing of this meat anywhere else because everything we sold was to the Government. The assistant steward explained that he had arrangements or connections whereby he could himself dispose of the meat that was not delivered to the ship. I told him that I would like to think about that a little bit and meet them at some future date. I wanted to talk to my principals about it. When I say "the chief steward" I mean Mr. Rodriguez. Both of those men then left my office and stated that one or both of them would contact me again.

Following another telephone call on Wednesday, January 17, 1945, I met the assistant steward at noon at Tadich Grill on Clay Street, right across from our place of business. He told me that the ship for which this meat was ordered was the Sea Perch, that it would be loading sometime the following week and that he would like to get from me a list of everything that we were to load on that ship. I told him that I would get that for him and deliver it to him when we met another time.

Following another telephone call on Friday, January 19, 1945, I met the assistant steward at the corner of Montgomery and Sacramento Street. We walked to the Palace Hotel. I gave him a list of the complete meat order for our ship that was placed with our company, sat down in the lobby of the Palace Hotel after picking up some memo paper from the American Trust Company Branch

Office there, made a list, and went over the list with the assistant steward. The list prepared at the time showed [81] a certain quantity of beef, W. A. S., meaning War Shipping Administration specification. It did not show what the cuts are or any breakdown of it. The assistant steward told me that only the choice cuts of meat were to be withheld from delivery to the ship and should be loaded in a separate truck. He wanted to know the quantities of each different cut of meat that would make up this order. I went into the telephone booth with the assistant steward, called our office, obtained the percentages of the various cuts of beef according to the War Shipping Administration's specifications and the assistant steward wrote those percentages down on a slip of paper in the booth as I called them off for him from my end of the telephone.

I recognize the paper you show me. I listed the items on this piece of paper on the left side of what I would call the front of it. Over on the right side, in the assistant steward's writing, are the percentages of the various cuts of beef as he copied them down as I called them to him. This paper only has the beef on there. The assistant steward made the entries on the right hand side of that sheet.

(The document just testified to by the witness was admitted in evidence and marked U. S. Exhibit No. 4 against the defendant Rodriguez, and for identification against the remaining defendants.)

When I first talked to the chief steward and assistant steward, the assistant steward said I should refer to him as "Joe." At that time I gave to the assistant steward my home telephone number—Tuxedo 6825.

At the Palace Hotel, after obtaining the percentages of the various cuts, the assistant steward and I sat down and made up a list according to his description of what would make a truck load somewhere under 25,000 pounds. About 19 or 20,000 would be the limit of any of our trucks. We listed all of the [82] choice cuts of beef according to the list I just identified and some pork items and some veal and lamb. I was directed by the assistant steward that that should be the meat that should be put onto a separate truck that should be withheld from delivery to the ship and the assistant steward explained that day as to how this truck might be delivered. He told me that the truck might go to the dock, the same as our other loads, would be loaded on the ship if there was anything to arouse suspicion, otherwise would be driven away by some truck driver to be furnished by him. He asked if we had a truck driver who might be taken into our confidence for not too large a fee to drive the truck and I told him that we probably could. He suggested that he contact a truck driver employed by our company that I might designate. I told him to call our place of business the next morning at nine o'clock and ask for Frank and I would arrange with Frank that he was to answer that call and would join the

assistant steward and the assistant steward would explain to this truck driver direct what he was to do with the truck.

At nine o'clock on the morning of Saturday, January 20, 1945, a telephone call came. I had instructed our telephone operator that when someone asked for Frank at nine o'clock to place that call on my phone. I asked the assistant steward to meet me at the same place—Montgomery and Sacramento Street—that I wanted to talk with him about the truck driver. I met the assistant steward at eleven o'clock and told him I thought it would be better for us to place this loaded truck on Sansome Street, right adjacent to our plant and just let it sit there and have his own driver come and pick it up. We walked to the place where I showed him the truck would be. On the way I told him that this was an impossible deal, that it just couldn't be worked. I told him that there no doubt were a dozen people, probably FBI people, following us, that I would [83] show him where the truck would be, but I recommended to him that he leave the truck alone. He assured me everything was all right, that he had all of his plans for the disposing of the meat.

On Monday, January 22, I had a call from the assistant steward asking me to meet him at Tadich Grill as he wanted to make arrangement about the delivery receipts for the entire order of meat. At noon I met him and I told him that he had better forget the whole deal, that it wouldn't work, but that if he wanted to go ahead the bills were on the

seat of the truck, the delivery receipts for the entire order of meat.

On Tuesday, January 23, 1945, I received another telephone call from the assistant steward, asking me if the truck was sitting out there on Sansome Street. I told him it was. He asked if the delivery receipts were on the seat of the truck and I told him they were. On this truck which was on the corner of Sansome and Merchant Streets there were approximately 17,000 pounds of pork and lamb from the order for the Sea Perch. At 3:40 p. m. on Tuesday, January 23, the assistant steward came in my office, handed me the signed delivery receipt for the entire lot of meat order for the Sea Perch, including that, that was on the truck at that time sitting out on Sansome Street. I saw it there still. The paper you show me is the one handed to me by the assistant steward. There were several copies of it. I put a notation on there showing I received it at 3:40 p. m., January 23, 1945. It is the delivery tag from which we prepare our billing against the War Shipping Administration for delivery to their agents the United Fruit Company for collection of our charges. It covers all the beef items and all of the other items of meat ordered from us for the Sea Perch except some pork shoulders that were on a separate order and separate delivery receipt. That receipt includes approximately 17,000 pounds still on the truck as testified to by me. The total amount of meat this sheet [84] calls for is approximately 64,793 pounds. I don't know the exact weight.

The delivery receipt testified to by the witness was marked U. S. Exhibit 5 in evidence against Rodriguez and for identification as against the remaining defendants.

The name of the man I have referred to as the assistant steward is Barral. The truck loaded with 17,000 pounds of meat remained at the corner of Sansome and Merchants Streets more than half an hour following receipt by me of this receipt for the meat. I did not see it drive away.

Cross Examination

(By Mr. Zirpoli)

On Saturday, January 20, I had a conversation with the assistant steward in which I stated to him that the deal was impossible. He stated several times that arrangements were made for disposition of the meat. He never told me what the arrangements were. He implied to me that he would never know where it went.

(By Mr. Friedman)

It is correct that I received this paper at 3:40 p. m. on January 23. On that day the truck was placed on Sansome Street at nine a. m. and remained there until four o'clock that afternoon. I do not know how long it remained there after four o'clock. I did not see the truck leave. It was a truck of the Ed Heuck Company. It had the name of the company on the side of the truck up by the cab. It was a motor truck and had approximately

17,000 pounds of meat in it. On that day, over a period of several hours from early morning, meat was delivered to the Sea Perch. The meat left the storage warehouse periodically during the day. I don't know how long but probably over a period of three or four or five hours. I don't know the time when the first load started or when the last load went to the ship. [85] Each load that went to the ship did not carry with it, its own inventory or receipt. I do not know how many pounds of beef were delivered to the Sea Perch that day.

(By Mr. Abrams)

Part of this meat delivered to the Sea Perch came from the National Ice and Cold Storage Warehouse on Battery Street and part of it from the Lawrence Warehouse Company freezer located on the premises of the Ed Heuck Company, on Clay Street. We ordered the ice house opened that morning at seven o'clock at which time the meat started to come out of the storage plant. All of the meat in this particular truck was frozen meat. All of the meat going to the Sea Perch normally would have been delivered before noon.

(By Mr. Resner)

We had a man employed at my company whose name is Frank Manzifero. I have direction over telling my subordinates as to where what meats will be delivered. I had authority to place this truck loaded with 17,000 pounds of meat on Sansome Street and I did so. I had authority to do

anything on behalf of the company. I withheld that 17,000 pounds of meat from the Sea Perch.

On Saturday, January 27, 1945, I went to the City Jail in San Francisco on Washington Street, below Kearny with Mr. McGee of the FBI. A man held as a prisoner was brought out and I said, "Yes, that is the man." The man was the chief steward. I did not know his name then. I now know it to be Rodriguez.

(Thereupon an adjournment was taken until March 7, 1945, at ten a. m., whereupon the trial was resumed and Elroy Hinman took the stand and his cross-examination by Mr. Resner continued, as follows:)

(Witness continuing): The first time I discussed the case with the FBI was January 19, 1945. On January 16 I received [86] a telephone call but I did not recognize the voice that called me. After talking to Barral and Rodriguez I did not identify the voice on the telephone and I could not say that it was Rodriguez who called. The voice that spoke to me on the telephone said that he was chief steward of a ship. I do not know whether he gave its name. He said he had some important business and would like to come to talk with me privately. He asked if I was general manager of the company. I told him I was. The voice said he was the steward. I do not recall the use of the words "chief" or "assistant." I think it was a more fair statement to say that the voice merely said "steward". I would not say whether he said "chief steward." I know who Barral is now. He is not

in court now. I have not seen him. I would not say which man opened the conversation on January 16. They both did lots of talking. In this conversation somebody said they had more meat on the ship than the inventory showed. They both said that and repeated it. Then the suggestion was made that I divert this meat. I had never seen these men before. I fell in with this conversation and discussed it with them at some length. They both said that we would receive a receipt for the full delivery. Both insisted that we would be given a receipt for the entire order. These men were in my office in the vicinity of thirty minutes. From that day until January 23, I did not see Rodriguez again nor hear from him by telephone or by written communication. I saw Rodriguez on January 16 and never saw him again until I saw him in jail.

Further Cross Examination

(By Mr. Friedman)

Referring to U. S. Exhibit No. 5, John Lawler, a man in our employ, prepared it. It was done under my supervision. I never saw the requisition when it came in. This was the first time I have seen it. The receipt for the 66,000 odd pounds of [87] meat was prepared from the order received from the United Fruit Company. I did not check the receipt back with the order although I know it was prepared from that order.

I have general supervision over the preparation

and sending of bills. I had something to do with the sending of the bills for the meat that was sent to the Sea Perch. I do not know whether a bill was sent to the United Fruit Company for this meat. I would have to depend on the records.

United States Exhibit No. 3 is the order for the meat approximating 59,000 or 60,000 pounds. There is a differential of over 6,000 pounds between the original order as placed and the amount of the receipt. I do not know whether there was another order besides Government's Exhibit No. 3.

Re-direct Examination

(By Mr. Hammack)

Government's Exhibit No. 3, the purchase order from the War Shipping Administration for meat for the Sea Perch, is merely an approximation. It could be varied sometimes by supplying less meat. In the event we are not able to supply a particular type of meat ordered we confirm with the company their willingness to accept a substitute or find out if they want something different. So the orders are not usually filled in precisely the same manner they are sent. Government's Exhibit No. 5 represents the exact amount and weight of meat that was shipped in pursuance of this order.

The paper you showed me was prepared by me from the list that I made at the time Barral and I went over to the Palace Hotel to supply what would be put on the truck, that was not to be delivered to the ship. I prepared the list and

gave it to our men who had charge of loading and requested the meat described on here to be placed on board a separate truck. Barral was not present when I prepared this list. I prepared [88] it to confirm with what Barral asked to put on this separate truck. This last represents the meat that was to go on the separate truck. (The list was marked U. S. Exhibit No. 6 in evidence against the defendant Rodriguez and for identification against the other defendants.)

Further Re-cross Examination

(By Mr. Abrams)

I prepared that list early in the morning of January 23 and gave it to the man who supervised our loading. It was my compilation of what was to be loaded on this one separate truck. To my knowledge no one saw this list except someone in my firm.

(By Mr. Friedman)

I do not know whether the company of which I am manager sent to the Sea Perch, United Fruit Company and/or the War Shipping Administration, meat equivalent to the amount that was in the truck on Sansome Street. At no time did I send another truck to this ship to complete this order. The meat that was sent by the Ed Heuck Company to the Sea Perch on or after January 23 was 17,000 pound less than the so-called receipt, Government's Exhibit 5, shows. The original order

that was placed with my company was not altered to the extent that it reduced the amount of meat by 17,000 pounds. As manager I had supervision of the books of the Heuck Company. Our books will contain a record of what was billed against the United Fruit Company, War Shipping Administration, together with the quantity and amount of deliveries that the bill represents. Those books are under my general supervision.

Exception No. 5

Mr. Friedman: Might I ask that the witness be instructed to produce the books?

The Court: I do not know that there is any reason for the granting of that. [89]

Mr. Hammack: To which I object, as to what the books show in regard to billing; it would be improper cross examination.

The Court: Unless some more adequate reason is shown I will deny it.

Mr. Friedman: I will wind this up by stating that while this witness ordered 66,000 pounds of meat to be placed upon the various trucks and ordered 17,000 pounds, approximately, placed in one particular truck, and that this witness said as far as he knows the only amount of meat that was made up and delivered to the Sea Perch that day was the 66,000 pounds less the 17,000 pounds, that even for the purpose of testing this witness' recollection or even impeaching his testimony I have a right to see the books that are under his supervision.

The Court: I do not think there is any materiality to your point. I will sustain the objection.

Mr. Friedman: Note an exception.

Testimony of Dean Heuck for the United States

DEAN HEUCK

produced as a witness on behalf of the United States, having been first duly sworn, testified in substance as follows:

Direct Examination

By Mr. Hammack:

I am a partner for the Ed Heuck Company, located at 530 Clay Street. It is a limited partnership, consisting of my brother, who is the general partner myself and Miss Pasquini, who are limited partners. During the month of January, 1945, I supervised an order of meat for delivery to the Steamship Sea Perch. Five trucks were required to handle the entire order, four large ones and one small one. The small one was loaded at 530 Clay, the four large ones down at Battery, at National Ice. Three large trucks and one small one actually delivered meat to the [90] Steamship Sea Perch. The fourth truck was placed out on Sansome Street, between Merchant and Washington. I recognize Government's Exhibit No. 5 in evidence. It is the receiving bill supposed to be delivered to the Sea Perch. It represents the entire order of meat for the Sea Perch—about 64,000 pounds. As far as I know there was only four trucks of meat delivered to the Sea Perch. The truck not

delivered had on it around 17,500 pounds, which is included in this shipping tag and was not delivered.

(Thereupon certain sacks, boxes and cartons containing meat were brought into the court room.)

(Witness, continuing): Government's Exhibit No. 6 was given to him by Mr. Hinman, the general manager. I was told to separate these special or certain cuts and load it on this one truck. I did so with the exception of the pork loins and the veal. I am referring to the large International truck that was left on Sansome and Merchant Streets. I recognize those boxes in the courtroom. That is the trimmed tenderloin. It was part of the shipment placed on the truck parked on Sansome Street.

I was in company with the special agents of the FBI down at the Millbrae Dairy when certain meat was recovered by the FBI. The meat recovered there was the meat that had been placed on this special truck that had been parked at the corner of Sansome and Merchant Streets. These three items—the box, the sack, and the carton of meat—were part of the meat that was recovered in my presence by the agents of the FBI at the Millbrae Dairy on January 23, 1945. The large box contains fabricated lamb. The sack contains oven prepared rib, and the carton contained trimmed tenderloin. These three items are typical of everything that was in that truck.

(The wooden box was marked U. S. Exhibit 7a, the carton 7b and the sack 7c. All three were admitted in evidence [91] against the defendant

Rodriguez and for identification against the remaining defendants.)

Cross Examination

By Mr. Friedman:

I supervised the loading of the fifth truck that never reached the Sea Perch. I did so in a manner to conform with the information that Mr. Hinman gave me as to what should go in that truck. I can identify them by the lot numbers of meat scheduled for that ship. I examined the lot numbers when they were taken out at Millbrae. When Mr. Hinman told me of these special things that were going to this special truck I was told why they were to be segregated from the other portions of the shipment. When I put these things in the special truck I knew that the contents of that truck were never to be delivered to the Sea Perch and I knew that the other four trucks were to be delivered to the Sea Perch. The 17,000 pounds of meat on the special truck was never delivered to the Sea Perch and another 17,000 pounds was never delivered to the Sea Perch to take its place.

Exception No. 6

Q. I see. Who did you bill for this meat?

Mr. Hammack: I object to that, may it please Your Honor, on the ground it is improper cross examination.

The Court: I will sustain the objection. An exception may be noted on behalf of all defendants.

Exception No. 7

Mr. Friedman: Was your company ever paid for the meat?

Mr. Hammack: Same objection, Your Honor.

The Court: Same ruling, same exception.

By Mr. Resner:

I have seen Government's Exhibit No. 3 before. It is [92] not added up with regard to any total. All the typewritten figures were on there when I received that order. I do not know who made the pencil notations in the left hand column. I do not know whether the pencil notations indicate what in fact was actually sent to the vessel. I do not know what the pencil notations mean. Those penciled notations were not on there when I received the order. I do not know Mr. Rodriguez. The only time I saw him before was once up in the jail where I was taken by the FBI. The FBI asked me if I recognized the man. There were two men there. I did recognize Barral. I didn't recognize Rodriguez at the county jail.

By Mr. Abrams:

(Mr. Hammack then delivered to Mr. Abrams an inventory of the packages that were checked at the Millbrae Dairy on January 23.)

Referring to the memorandum you gave me it says here there were 321 packages checked at the Millbrae Dairy like Government's Exhibits in evidence 7-A, B and C.

Testimony of Melior Brandt-Neilson for the
United States

MELIOR BRANDT-NEILSON,

produced as a witness on behalf of the United States,
being first duly sworn, testified in substance as follows:

Direct Examination

By Mr. Hammack:

I am a checker. I check ship's stores for the United Fruit Company and was so employed on January 23, 1945, on the pier at the Army Base in Oakland. I was checking supplies on the Sea Perch on January 22 and 23rd. During the course of the day I received some meat from the Ed Heuck Company of San Francisco. I can't remember the exact number of trucks, there were three or [93] four. I was on the dock all the time. I was unable to check the meat that was unloaded from these trucks. I did sign a receipt of the Ed Heuck Company for the meat received. The second steward—the storekeeper gave me the Heuck tags. His name is Barral. He handed me the papers and I did not understand him so well, but he said something about the amount of meat at the time or something like that. Having signed the delivery tags I gave Barral three to give back to the drivers and put five in my brief case for the office. Afterwards I gave the five I put in my brief case to Mr. Hamburg. I gave three to the second steward and five to Henry Hamburg. Government's Exhibit

No. 5 in evidence is the shipping tag which I signed. That is my signature.

I know Mr. Rodriguez was chief steward on the Sea Perch on January 23, 1945. I have bad sight.

(Thereupon the witness walked down into the courtroom and indicated the defendant Rodriguez.)

On January 22, 1945, in the morning, I had a conversation with Rodriguez in his room on the Sea Perch. No one else was present. We were sitting down talking about economy of stewards in food supplies and wasting food and the chief steward said, "If everyone of the stewards would take care of the food we could save lots, many thousands of pounds of food for the company." He said that for his part, "I saved about 10,000 pounds of beef." He didn't say which way he was saving it or that he put it on his inventory or anything like that. He said, "I went up to Heuck Company, I talked to the sales manager, and I have 10,000 pounds of beef, I have so much I don't know what I shall do with it, if I am supplied all of the meat that you have in the order I don't know how I shall use it, or what I shall do with it." The salesman answered him, "Well, we can use all of the meat for another ship, we could use it, we have a lot of ships that can [94] use all of the meat that we can get. So can you return some meat we will be glad to pay for it, and pay you for it," or something like that. Well, I was looking at the chief steward, because I was surprised, and I couldn't understand him so well, I couldn't get what he meant. He says, "What about it, shall we make the money?"

—and he mentioned a hundred dollars; well, I didn't get about the hundred dollars, whether it was from Heuck to me or if it was coming from him to me, and I was sitting still. Somebody knocked on the door then and the both of us went out.

Cross Examination

By Mr. Friedman:

My duty is to receive and check the stores. It isn't always that we can check the stores unless we have two on the dock. When I check it then we just let the driver put the stores on the floor or anything and then we sign the paper. When we have the opportunity to check it, we check it and make a short list of it which goes to Mr. Hamburg or Mr. Marchal. There are times when I do not check the stores against the receipts. When there are so many loads on the dock I can't check them alone. When I signed this receipt that has been shown to me I didn't know whether I had received that amount of stores or not. I didn't know how much meat there was. I couldn't check it because when I signed it they had it all mixed up, the checked and unchecked and stored it aboard the ship. When I did get time in which I could check these stores they were all mixed up with other stores and it was impossible. They were all mixed up with supplies that came from other firms besides Heuck Company. When we have time we check the stores and if something is short we make a short list. That is a list showing the items that are short. I did not make a short list of the meat that came from Heuck Company on January 23, when Mr. Barral gave me

the tags to sign, I signed them. I knew Barral before. I can't exactly remember what Barral said when he gave me the tags to sign. He said [95] "Here is some paper for the meat." Something like that and I took the papers and signed them and gave him three and put five in my brief case. I did not ask Barral if the meat had been checked. Barral had nothing to do with checking the meat.

By Mr. Abrams:

Referring to Government's Exhibit 5, that is one of the papers that Barral gave me. He gave me eight copies of the same. That is a delivery tag for the meat. I turned three over to the second steward for the drivers of Heuck and five to the company.

By Mr. Resner:

I have been a dock checker for two years and directly and indirectly connected with the United Fruit Company since 1938, but for three years I was port steward for ships under the Danish flag. On January 23 I was the only dock checker on the ship. Mr. Barral approached me about lunch time, maybe 12 or one, maybe before that. He handed me eight copies of this delivery tag. That procedure of the second steward giving me the delivery tags and asking me to sign them was in the usual course of business without it happening all the time that way. When a delivery tag like this, indicating that there are 60,000 pounds of meat in the trucks, is given to me I am supposed to check the meat in the trucks as against the delivery ticket. That is my job if I can do it. When Barral handed me the delivery tickets

and I signed them that was something that I had been doing every day for months in checking cargo on the ships. If I had time to check I checked before I signed and if we don't have time to check we sign the delivery tags anyway and check it later. I could not have kept that cargo on the dock until I checked it. I have nothing to do with loading the stores. As checker I have no authority to keep cargo on the dock. I can't stop it from being put on the ship. The Army is against keeping the stores on the dock. It wants it all loaded on the ship as fast as possible. [96] During the time I have been working as checker this same thing had happened before, that is, cargo coming down to the dock where I signed for it without checking it and it got onto the ship before I checked it. There was nothing unusual about Barral asking me to sign this ticket although it was the first time he had ever asked me to do so. Rodriguez did not present anything to me to sign. At no time in connection with the Sea Perch did Mr. Rodriguez give me anything to sign or talk to me about anything to be signed.

On January 22, when I went to Rodriguez on the Sea Perch he was there. There was nothing wrong about the conversation I had with Rodriguez. He said that the big item aboard these ships that the vessels took was the waste. I know that there was a lot of waste. Rodriguez said that on this last trip that the Sea Perch had just come back from, that he had saved 10,000 pounds of beef. Rodriguez said that the man at Heuck Company had told him that "if you could return any of the meat we would be

glad to pay you for it." I can't exactly remember what the words were about the \$100.

Redirect Examination

By Mr. Hammack:

Ordinarily when drivers deliver supplies for a ship it is the drivers who deliver supplies and ask me to sign for them.

Recross Examination

By Mr. Friedman:

When four or five truck loads of things come to the dock, whether from the same company or different companies, each driver of a truck has his own delivery tag. Prior to January 23 nobody had told me not to check the meat that was going to come to the Sea Perch from the Heuck Company and prior to the time Barral gave me those eight papers to sign nobody told me to sign any papers that Barral should present to me. [97]

Testimony of Henry Hamburg for the United States

HENRY HAMBURG,

produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

Direct Examination

By Mr. Hammack:

I am in the employ of the United Fruit Company in charge of receiving ship's stores. It amounts to

my being chief checker. I was so employed on January 23, 1945, and I was kept in the office of the United Fruit Company until approximately twelve o'clock, at which time I crossed the Bay and came to the Sea Perch at one o'clock. The Sea Perch was berthed at the Oakland Naval Supply Depot, Pier 4. The Sea Perch is a troop transport. Shortly after I arrived I received from Mr. Brandt-Nielsen, who was checking stores receipted delivery tags which, among others, included certain items from the Ed Heuck Meat Company. I received five copies which I took aboard ship, along with the other papers I had, to the chief steward's room on the Sea Perch and prepared the papers for signature and awaited the appearance of the chief steward, Julio Rodriguez. The paper you show me is one of the tags given to me by Mr. Brandt-Nielsen covering the delivery of the meat from the supplier named on the tag—the Ed Heuck Company. My name appears there in stamp. It is stamped on that tag for me to sign and that is the name of Rodriguez, the chief steward. He signed it at my request sitting along side of me in his room. (The tag was marked U. S. Exhibit No. 9 in evidence against the defendant Rodriguez and for identification against the remaining defendants.) Following the signature of myself and Rodriguez on this delivery tag I took it back to the accounting department of the United Fruit Company. I personally hold them until the invoices comes in when they are matched with the supporting [98] invoices of the supplier. The tags go to Mr. Bugglem of the United Fruit Company.

Cross Examination

By Mr. Friedman :

When I turn these tags over to the accounting department they do not immediately leave my jurisdiction. I hold them until the invoices come in and they are matched against the supplier invoice. I prepare a copy from that supplier's invoice to give to the chief steward so he will know what the prices are because he is required to compute certain costs per man during the voyage. When I receive one of these tags from the dock checker I prepare it for the signature of the chief steward and for my own signature. It is one and the same act. I stamp it when I am satisfied that it has been received from a supplier along side of the ship. I stamp it and sign it, which means my approval and I in turn give it to the chief steward for his signature. When I say I prepared this paper for these various signatures I mean I put this red rubber stamp on there. I am required to sign it. I satisfied myself in this particular instance that the tag represented the stores that had been delivered upon the word of Mr. Brandt-Nielsen. I asked him if this was the complete order and he answered, "Yes." When I went to Mr. Rodriguez for his signature I presented it to him for signature. I had with it a good many other tags covering other stores from other suppliers for which I was waiting in his room for him to sign. Among these were the Heuck Company and when he came in I told him I wanted his signature on every one. I simply presented the tags and said, "Here are the materials you received

and I want you to sign on the tag." I did not ask Rodriguez if he had checked the stores to see whether the tags correctly represented the goods received. When I arrived on the dock at one o'clock at least one of the Heuck Company's meat trucks [99] together with other trucks from other suppliers was unloading. I asked Rodriguez to sign these tags from forty-five minutes to an hour after I arrived. There were four copies of each tag for Rodriguez to sign and I would say that there were at least from twelve to twenty tags. I simply said to him, "Here they are, sign them," and he signed them all. It is not the duty of the chief steward to be down on the dock checking supplies. Technically it is my duty, but I have an assistant, Mr. Brandt-Nielsen, and under ordinary circumstances when we receive supplies I am present; and there were circumstances which delayed my coming over this morning, which meant that Brandt-Nielsen was alone checking supplies until I arrived at one o'clock. The red stamp placed on there certified to the correctness of the amount of material described on that tag as having been received alongside of the ship. Ordinarily when these tags are presented to the chief steward to sign, as a matter of fact the chief steward does not know whether the stores are there or not. He takes my word for it.

Testimony of Harold Buggeln for the United States

HAROLD BUGGELN,

produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

Direct Examination

By Mr. Hammack:

I am chief clerk in charge of accounting for the United Fruit Company and as such I audit or see that the bills and invoices rendered to the United Fruit Company for the War Shipping Administration are checked and audited. Government's Exhibit No. 9, a shipping tag from Ed Heuck Company, I probably saw the next day after the delivery was made when these were sent in to the office. If delivery was on January 23 I would have seen it January 24. Upon receipt of the tag it is held for the War [100] Shipping Administration. The tag is used in the preparation of payment for the materials and supplies which the tag calls for.

Cross Examination

By Mr. Friedman: [101]

The tag is used in support of the invoice. It indicates the receipt of material. Before an invoice can be paid you have to be certain that the material has been delivered and the only way you have of being certain is from this tag. When I get the invoice I check it against the tag.

Exception No. 8

Q. When did you check the invoice against this tag?

Mr. Hammack: To which I will object, may it please your Honor, on the ground, it is improper

cross examination. He did not testify he did check it against the invoice.

Mr. Friedman: Withdraw the question.

Q. Did you check this tag against the invoice?

Mr. Hammack: The same objection, may it please your Honor.

The Court: I will sustain the objection and note an exception in favor of all the defendants.

By Mr. Resner:

When I received this paper I held it until the invoice was received—it is held on the invoice clerk's direction until the invoices are received. It eventually was sent to New York to our New York office, who make the payments. In the ordinary course of business and in order to prepare the papers so that payment can be made, it is necessary that in addition to delivery tags that we have invoices. The United Fruit Company pays my wages and has done so ever since I worked for them. I am not an employee of the War Shipping Administration.

By Mr. Friedman:

This paper was eventually sent to the New York office. It was accompanied by an invoice from Ed Heuck Company. When I say this paper I mean one of the duplicates and an invoice was sent along with it. A copy of that invoice was kept here and is still in my custody. This tag and an accompanying invoice was [102] sent to the New York office for payment. When I sent the duplicate of United States Exhibit No. 9 on to New York for payment of the

invoice it called for payment commensurate with the amount of meat mentioned in this tag. I received from the Ed Heuck Company an invoice calling for payment to them of the 64,000 odd pounds of meat. I do not know whether it was paid.

Redirect Examination

By Mr. Hammack:

The meat that was recovered by the FBI in the warehouse at Millbrae and is now in storage in the Army warehouse in San Francisco, now belongs to the United Fruit Company or the War Shipping Administration and is paid for—at least the bill for the same was sent on to New York for payment. When I received this shipping tag calling for 64,793 pounds of meat I knew that some of it had not been delivered. How much of it I did not know at that time. I heard the amount the next day on January 24.

Recross Examination

By Mr. Friedman:

When I knew that all the meat represented by the invoice had not been delivered I did not make any change in the invoice. When the invoice was sent to me by Ed Heuck Company an explanation went along with it, and I forwarded that information on to New York. A letter of explanation went to New York with the invoice stating that so many pounds of meat were recovered, but as we had indicated receipt for the material in full by our checker we felt obliged to pay for that meat. Furthermore, that the meat

would be held in refrigeration in the warehouse pending the outcome of further investigation and possible trial and that after it had served its purpose it would be delivered to us for consumption on one of the other ships.

By Mr. Resner:

As my checker had receipted for the meat [103] the United Fruit Company felt responsible. Mr. Neilsen is paid by the United Fruit Company and so is Mr. Hamburg. Neither of those gentlemen is an employe of the United States or the War Shipping Administration.

(Later in the trial Harold Buggeln was recalled and testified in substance, as follows:)

Direct Examination

By Mr. Hammack:

All bills for all supplies for the ships operated by us for the War Shipping Administration were paid by our New York office from a joint account which is established in accordance with the general agency agreement.

Cross Examination

By Mr. Friedman:

I did not bring with me a copy of the invoices. We did not get a letter from the Heuck Company. There was a letter that accompanied the invoice for the meat they delivered to the Sea Perch. I wrote the letter that I sent on to New York accompanying that invoice.

By Mr. Resner:

The morning following January 23 was when I was first notified that there was any deficiency in the shipment of meat on the Sea Perch. After the FBI was down at the office making an investigation I gathered from him that some truck load of meat did not arrive at the Sea Perch and should have. It was on that information that I received from the FBI that I subsequently wrote this letter to our New York office accompanying the invoice which came from the Heuck people. There was nothing on the list whatever that came from the Heuck people to indicate that any of the items on that invoice had not been delivered. [104]

Testimony of John Lawler for the United States

JOHN LAWLER,

produced as a witness on behalf of the United States being first duly sworn, testified in substance as follows:

Direct Examination

By Mr. Hammack:

I have charge of inventories for the Ed Heuck Company and was so employed during the month of January, 1945. I prepared a shipping tag for an order to the Ed Heuck Company from the War Shipping Administration to be delivered to the Steamship Sea Perch. Government's Exhibit No. 9 was prepared under my supervision. It represents the total amount of meats to fill the original requisition

of the United Fruit Company for this ship. The total amount of meat represented is 64,793 pounds. These figures were arrived at from the weights that are taken from one of our warehouses, the National Ice & Cold Storage Company. We receive an out tag of every item that goes in there under a lot and we take the combined lots and their net weights and combine them and that is the total set for the shipper.

(Here the witness identified certain tags showing meat withdrawn from the National Ice and Cold Storage Company which tags were marked United States Exhibits Nos. 10-A and 10-B for identification.)

Subsequent to January 23 I did go down to examine some meat that had been recovered from the Millbrae Dairy and the lot numbers on that meat were for the order covered by the shipping tag Government's Exhibit No. 9. I did this sometime last week.

(Later in the trial John Lawler was recalled as a witness for the United States and testified as follows:)

The total weight of the meat withdrawn from the warehouse for the Sea Perch order was 64,793 pounds. [105]

(Thereupon the court admitted United States Exhibits for identification 10-A and 10-B in evidence as United States Exhibit No. 10.)

Testimony of Pierre François Barral for the
United States

PIERRE FRANCOIS BARRAL,

produced as a witness on behalf of the United States,
being first duly sworn, testified in substance as follows:

Direct Examination

By Mr. Hammack:

I am one of the defendants named in this case and have heretofore pleaded guilty in this court and I am now awaiting the judgment of the court following my plea of guilty. I know the defendant Julio Rodriguez and I also know the defendants Fernand Chevillard and George Patron. I have known Mr. Patron about sixteen months. At one time I went to sea with Patron on the ship Monterey. That was in 1943, from June to September. Patron and I were in the steward's department. After I left the Monterey I went on the Sea Perch. My two first trips on the Sea Perch were as supervising chef and one trip as second steward the last trip. The last trip commenced in October and ended in San Francisco, December 28, 1944. I was in port in September, 1944, and saw the defendants Patron and Chevillard. I went up there with the defendant Rodriguez. In September, 1944, I had a conversation with Patron and Chevillard in connection with meat in the Normandy Restaurant. It was at night and no one else was present at the conversation except Chevillard and Patron.

Here a discussion took place between court and the various counsel as to conversations and physical evidence taking place or referred to with or in the presence of one defendant and out of the presence of the others, as follows: [106]

Mr. Zirpoli: I object to the conversation. For the purpose of the record I want to object to any conversation as not being binding in anywise upon the defendant Vincenzini.

The Court: The Court will note that objection.

Mr. Resner: As to all defendants?

The Court: That will apply.

Mr. Abrams: We are starting over again.

The Court: Mr. Zirpoli wanted to make the point again.

Mr. Zirpoli: I went over the record as it was prepared yesterday, and whereas the record yesterday seems to indicate that an objection is being saved for all defendants as to all witnesses that have appeared, I feel that an objection is necessary to justify a motion to strike, and whereas the record seems to indicate that such an objection is saved, I also noted statements made by the court and counsel and at the same time exceptions were not saved, and I want to protect the record in that respect. If I can have it understood that to have been the record, objections as to all witnesses that have appeared heretofore, and that the objections have been, certainly in so far as my client is concerned, based on the ground that their testimony is immaterial and in nowise binding upon my client, and that such objections have been overruled and an exception noted,

of course I have no desire to make individual objections.

Mr. Abrams: And your Honor is also protecting each defendant in that regard with respect to the physical evidence offered?

The Court: That is my intention.

Mr. Zirpoli: I realize that was your Honor's intention, but I was——

The Court: These conversations, of course, are admissible in evidence to the extent of those participating in them, and they are in the record, but it was the intention of the court, [107] without constant reiteration of the objections, to protect your rights so that you could make a motion to strike out, and that to that end that you were deemed to have made objections and had the objections overruled and exceptions noted in each instance.

Mr. Zirpoli: I noticed in the record, for instance, there was no notation of the exception, I am glad we have had this straightened out. Thank you.

The Court: Very well.

(Witness, continuing): They asked me if I could get meat from anywhere. I told him that in no way I couldn't get the meat, because on the ship we couldn't take any meat. He asked me a couple of times if I couldn't get any meat. They just asked me if I couldn't get any meat for them, but they don't ask me if I could get meat from ship. I said, "I don't know where I could get any meat." That was all that happened in September. After that I went to sea as second steward. Rodriguez was chief steward. We returned to San Francisco December

28. Before we returned to San Francisco I never talked to anyone in connection with meat or disposing of meat upon my return to San Francisco. About two days before I arrived at port I did not talk to anyone about disposing of meat in San Francisco. Rodriguez told me he had some meat on board ship. This was in the chief steward's room on the Sea Perch. No one else was present. It was about two days before we got to San Francisco. Rodriguez said he had about 20,000 pounds of meat aboard the ship that nobody knew about and he said, "Is there any way we can sell that meat?" I says, "I don't know about it yet," and he says, "How about your friend in San Francisco who speaks French." I says, "I don't know yet. We have to make port first." Nothing else was said at that time. Before Rodriguez went to New York, after we arrived in port he told me to go to the meat company and find out if we can make arrangement [108] with the company. The ship came in port on the 28th and Rodriguez left for New York on the 2nd or 3rd day after that. The conversation took place on board ship. We had been in port one or two days. No one else was present. Rodriguez told me to go see some meat company, see if I could make a deal with them, make some arrangement to sell the meat. Nothing was said as to what the deal was. I didn't do anything until Rodriguez came back from New York. He came back on Saturday, the 13th day of January, 1945. On the afternoon of that day I had a conversation with him on the ship. He asked me if I made a deal with some meat company about the meat and

I said, "No." He says, we go sometime next week and see if we can make something." That is all that was said. On Monday or Tuesday we went to see Mr. Hinman. I did not talk to anyone else about meat before I went to see Mr. Hinman. I did not call on anyone in San Francisco upon arrival of the ship. I did go to the Normandy Restaurant where I saw Patron and Chevillard. That was the first day we arrived. After Rodriguez returned from New York I talked to Chevillard and Patron. It was the same night that Rodriguez came back—January 13. It was at night. Rodriguez was not with me. I talked to Patron in the bar and I talked to Chevillard in the back of the dining room. I told Patron that I might get some meat for them and he said they were ready to take the meat any time. Then I talked to Chevillard the same as to Patron and Chevillard said he was ready to take the meat any time that we be ready.

On Tuesday, the 15th, I went to the meat company with Rodriguez about one or two o'clock in the afternoon. Rodriguez telephoned to Hinman first. We saw Hinman in his office at the Ed Heuck Company. Only Hinman, Rodriguez and I were there.

Q. Did you have a conversation at that time with Mr. Hinman in connection with meat? [109]

A. Mr. Rodriguez talked to Mr. Hinman.

Q. Tell us, now, what Mr. Rodriguez said to Mr. Hinman and what Mr. Hinman said to Mr. Rodriguez?

A. Mr. Rodriguez told him that he had some

meat on board ship, eighteen or twenty thousand pounds of meat that nobody knows about it, and if he can make arrangement to sell that meat. He says, "If you don't want to make the deal, just forget about it," and Mr. Hinman he says he don't know, he say, about it. He couldn't say yes or no, and he said that one of us, Mr. Rodriguez or I, come and see him the next day at the lunch time.

Q. Is that all the conversation you had at that time?

A. Mr. Rodriguez said we got—Mr. Hinman would get one-third and Mr. Rodriguez would get one-third, and I would get one-third.

Q. Was anything said about how the meat would be invoiced or billed, or anything?

A. Not that day, no.

Q. Was that all the conversation on this occasion?

A. Yes, sir.

I met Mr. Hinman the next day and had lunch with him. I don't remember exactly what was said. We talked about the meat. I said we wanted to get about eighteen or twenty thousand pounds. The Ed Heuck Company did not have any order for meat for the Sea Perch for that time. On Sunday, the 14th, and on Monday, the 15th, and on Tuesday, the 16th, I talked to Chevillard and Patron. On the 16th I told them I might get some meat for them, that I might get some eighteen to twenty thousand pounds. I do not recall anything else said on that occasion about meat.

When Rodriguez and I talked to Hinman, Rodriguez said that the meat company will sell the meat

to some place else and keep the meat over there in the meat plant instead of sending the [110] trucks over there but Mr. Hinman said they didn't sell any meat but only supply the ship and there was no way to sell the meat some place else. Then we left.

(Thereupon an adjournment was taken until March 8, 1945, at ten a.m., at which time the witness Barral resumed the stand and his direct examination continued as follows.)

Witness (Continuing): I met Mr. Hinman at a lunch place near the meat plant the date following January 16. Hinman said it was time to make arrangement to get the meat, but we did not know how to do it that first day. Mr. Hinman said he would take care of that. After lunch I went back to the ship and told Rodriguez of the conversation I had with Hinman. Rodriguez said we will see how it is going to work. That night I went to see Patron and Chevillard in the Normandy Restaurant. I said, "Maybe we had to get the meat. I just saw the manager during the day." Chevillard and Patron said they were ready to take the meat any time it would be fixed. Mr. Chevillard said the price of the meat would be forty-five or thirty cents a pound—they would pay according to what the meat was. I understand they wouldn't pay forty cents a pound for chuck.

On the 17th or 18th of January I saw Mr. Hinman. We went I think to the Palace Hotel. Hinman had the order from the company and he showed me the order. I selected some items and told him what meat I wanted from that order. Government's

Exhibit 4 was given to me by Mr. Hinman at the Palace Hotel. I wrote on the right hand side of that paper. Mr. Hinman called up the company from a telephone booth and asked them how much meat he was supposed to get and I was marking the order when Mr. Hinman was talking over the phone. I marked down all the better cuts of beef. I had no other talk with Hinman that day. I went back to the ship and told Rodriguez about the talk I had had with Mr. Hinman. Rodriguez did not say [111] anything except that he was satisfied with the deal and how it was working out.

The next day Hinman was supposed to get in touch with the truck driver for the meat company. I did not see him but I talked with him over the phone. He did not get a truck driver. I talked to him about a truck driver at the lunch place. Hinman told me he would let me know the next day after he talked to the truck driver. The next day he called me and said he couldn't trust the man. He couldn't take a chance with that man. I had to look for a truck driver myself. Mr. Hinman gave me his home telephone number and I gave it to Rodriguez. After the talk about the truck driver I went to see Patron and Chevillard and told them if they knew somebody who could drive the truck. They said they would look for somebody, but they didn't find nobody. Up to this time I did not say anything to Patron or Chevillard about how much meat I was going to have except from fifteen to twenty thousand pounds.

I told Chevillard and Patron how I was going to

get the meat and about the delivery tags in the Normandy Restaurant on the 18th or 19th of January. I told them that we would get the meat, "not from the ship but from the meat company, that we have the meat on the ship, 20 or 25,000 pounds of meat and that we got a truck that would go to their place." I told them the meat would be coming from the meat company. I said the meat was a truck load, instead to go on board the ship it would go to their place, that meat was covered by what was on board, supposed to be left over. They asked me if it was safe. I says, "The bill will be signed by the ship's steward or the checker." They said to let them know when we would be ready to deliver the meat. On January 22 I saw Mr. Hinman in the street. He told me that truck would be loaded and be in a certain place waiting for us and that the bill will be right on the seat of the truck. [112]

That is all that was said. It was about eleven or ten o'clock in the morning.

On January 23 I went on board the ship, about nine o'clock in the morning, and there was already some truck already on the pier unloading meat and the checker was there and Mr. Rodriguez was there checking the meat, and there was an Army Lieutenant or soldier checking the meat too. All the trucks were there except that truck was in the street. Rodriguez and I were waiting for that Army man to get off the pier. Then we can find the bill. Rodriguez and I talked, said that we couldn't do nothing as long as the man was there on the pier. Rodriguez said that. At 11:30 Rodri-

guez told me to go on the truck and get the bill to be signed. The truck was in San Francisco and the bill was on the seat of the truck. I came over to San Francisco and got the receipt off the truck and went back to Oakland where I gave the bill to the checker, Brandt-Neilsen, who signed the delivery tag. Government's Exhibit No. 5 is the bill from the meat company that I gave to Brandt-Nielsen and which we signed. Rodriguez said that the checker will sign the bill or him. If the checker was not there he would sign the bill himself. Rodriguez said that he or the checker would sign the bill but that was already fixed. He didn't mention whether it was fixed with the checker or not. Then I came back to town and went to the office and gave Mr. Hinman the tag, Government's Exhibit No. 5. After I left Mr. Hinman I went up on Broadway looking for a truck driver and found Lucien De Angury. After that I went back to the Normandy and saw George Patron and told him I had a truck driver with me. Patron said, "Let us go to the place and get the truck and load it." From the Normandy Restaurant we went to the truck driver's place and the truck driver changed his clothes. Then Patron took us to where the truck was near the meat plant. Patron took us to the truck [113] driver's home and from the truck driver's home to where the truck was. At that time I knew we were going with the truck to Millbrae. I had a diagram or map as how to get to Millbrae. I had one from Chevillard. I recognize the envelope you show me. Chevillard gave that to me on the

22nd. It is a map to go to Millbrae from San Francisco.

(Here the envelope was offered in evidence against all defendant's except Vincenzini and Jacky and marked U. S. Exhibit No. 11.)

I received a second map showing the route to Millbrae from George Patron. He gave it to me in the garage place on the road where we were repairing the light for the truck. When we got to the truck we couldn't start it, the battery was dead. We finally got the truck started and started for Millbrae. Lucien De Angury was driving the truck and I was sitting with him. About half way between San Francisco and Millbrae we made the first stop. Patron was ahead of us in a car. He came back when he found out we were stuck. The paper you show me is a map from where we were to go to Millbrae. It was given to me by George Patron.

(The map was admitted in evidence as to all defendants except Vincenzini and Jacky and marked U. S. Exhibit 12.)

We had battery trouble on the trip and got a new battery from a garage. George Patron, De Angury and myself were there at the time. After we had the battery fixed we proceeded on to Millbrae. Patron was leading the way. At the Millbrae Dairy we back up the truck to unload the meat. When the truck arrived at the Millbrae Dairy there were present Chevillard and Patron and Mr. Jacky. I had never seen Jacky before. There

was also De Angury, George Patron, Chevillard, the truck driver and myself, all unloaded the meat. Jacky only checked the meat. That was about 9 or 10 o'clock at night. [114]

Cross Examination

By Mr. Friedman:

I am thirty-seven years and was born in France. I have been in America since 1940. I am not a citizen. I have my first papers. I pleaded guilty in this case.

Exception No. 9

Q. What was it you pleaded guilty to?

Mr. Hammack: I object, your Honor. The indictment speaks for itself.

Mr. Friedman: I am trying to find out what this man thought he pleaded guilty to.

Mr. Hammack: It is not a question of what he thought; he pleaded guilty.

The Court: I sustain the objection. I think that is a legal question.

Mr. Friedman: Exception, your Honor.

The Court: Exception noted.

On January 15, I saw Rodriguez. Rodriguez asked me when he was in New York if I make arrangements with the meat company and I said, "No." Then he say we go sometime in week. On January 17 I saw Mr. Hinman in the lunch place about one o'clock in the afternoon. We talked about the deal, about the meat. That is the day we went to the Palace Hotel and Hinman told me the order

of meat he has got. He show me the order he got from the War Shipping Administration. He called up his company and talk over the phone about the meat and I was marking on what I showed before, the piece of paper, what kind of meat we were supposed to get from the meat company. Hinman and I decided that day the kind of meat I wanted.

The first time Rodriguez and I talked about meat it was at sea. I was second steward and storekeeper on the boat. My duties were to make the bill of fare, the menu and requisition, [115] but everything had to be o.k.'d by the ship steward. By requisition I mean that every day for what we need for the troops and crew. My duties in port are to stand by on board the ship and to take care of the repair. I have no duties on the dock. It is not my duty to check the stores that come on the boat unless the ship's steward told me so. I have seen the chief steward checking stores on the dock in different ports. In New York they do very often. I do not remember seeing him do it out here.

On January 23, there was one or two regular checkers on the dock. Mr. Brandt-Neilsen was there. I saw only one checker there. Rodriguez and I were on the dock. About nine o'clock in the morning. I saw trucks come that had meat on it. They were already there when I came on the pier at nine o'clock. I don't know how many trucks. I was only interested that morning in the meat trucks. I saw them unloading the meat from the trucks. I saw Mr. Brandt-Neilsen walking from one place to the other checking the meat, the vegetables and

the fruit. I can't say for sure I saw him checking the meat. There was a soldier or Army Lieutenant checking the meat. I am sure of that. He was counting the case, the box, you know, when they unload the truck. He was writing something down. They take the number of the case. It was because this soldier was checking this meat that Rodriguez and I couldn't get the bill signed. This is when Rodriguez told me we would have to wait until the Army man stops checking before we can get the bill signed. He said that after twelve o'clock. From nine to twelve I stayed on board the ship. I had nothing to do that day. That was my week off. There was nothing to stop me from any time between nine and twelve o'clock going up to San Francisco on Sansome Street and getting the bill off the truck. I waited until twelve o'clock until Rodriguez told me to go and get it. It took me about an hour and a half [116] to two hours to go to the truck and get the bill and come back. It was about two o'clock or two thirty when I got back to the Army Base. I looked the bill all over on my way back to the Army Base. I didn't read each item. When I came back to the Army Base about two thirty or two o'clock Rodriguez was still on the dock and so was the checker. The Army man had gone. I gave the bill to the checker and Rodriguez asked me if the checker signed the bill and I said, "Yes." Rodriguez told me to go and get the truck. Nothing else was said about the bill. Rodriguez told me that everything was fixed with the checker. He told me this in the morning before I went to get

the bill. Rodriguez told me that if the checker wouldn't sign the bill he would sign it himself. When I came back I didn't give the bill to Rodriguez first. I gave it to the checker. I didn't say anything to the checker. I gave him the bill and he signed it. He didn't ask a question. It is not my duty to give bills to the checker to be signed. I had never done so before.

The week end of January 22 was my week end off. I worked that week. I do not report to anybody when I come to work in the morning. On the 23rd I first came on the dock around nine o'clock or eight thirty in the morning. I had not slept on the ship the night before. On the 22nd I saw Chevillard and Patron at the Normandy, about eight or nine o'clock at night. I used to go there every night for dinner. I am not sure whether I saw them on the night of the 21st which was Sunday night. On that night I was in Oakland with a lady. The lady drove me to the dock on January 23. It is not a fact that I did not arrive at the ship or on the pier before eleven o'clock that morning. I arrived there no later than nine.

When at sea Rodriguez took his inventory of the meat he had on hand and said there was about 20,000 or 25,000 pounds of meat that was left over. I did not make out such inventory. [117] I only check what is in the storeroom or is in the ice box. I did check the meat. I couldn't tell you exactly how much meat there was because I didn't total the amount. I only gave him the meat—so many thousand pounds of beef, so many thousand

pounds of pork. I didn't make the total. I did that in writing and turned the list over to Rodriguez. It was then Rodriguez said he had 20,000 or 25,000 pounds of meat more than he was supposed to have on his ship according to the papers, not according to my papers. It is not a fact that after I made an inventory of meat and stores on the ship and gave that inventory to Rodriguez that Rodriguez looked it over and told me that my inventory was wrong in that he had 20,000 pounds more meat on the ship than my inventory showed. I did not ask Rodriguez how there happened to be 25,000 pounds more meat than he was supposed to have. Rodriguez said, "See if we can sell that meat." Nothing else was said at that time. Before Rodriguez left for New York, after the ship came to port in San Francisco, Rodriguez told me to go in town and look for some company where we could sell that meat, that is all he said. He told me to go see the company where we got the meat the previous trip. While Rodriguez was in New York I did not go to see any meat company. When he came back he asked me if I went to see the company, and I said, "I have no time to see anybody." He said, "You go sometime next week." That was on Saturday, the 13th. Rodriguez sent a telegram from New York or Miami to Halstead, the port steward, that he would be back about Saturday, and the same day I went to Halstead to ask him for time off because I had no time off for six months. When Rodriguez got back I got my time off. My time off started on Monday, the 15th. I

was supposed to get the whole week off—not the whole week because we was to sail on Saturday and I had to be on the ship two days before the ship sailed. On Tuesday, the 16th, we went to see Mr. Hinman. Rodriguez phoned Hinman first [118] and I did too. The first time they answered Hinman was not there. Later I called up and asked whoever answered the phone the name of the manager of that meat company. Rodriguez asked that. He called up the first time. I called up the second. Although I called up it was Rodriguez who asked for the manager. I didn't talk to anybody at the meat company. In the phone conversation Rodriguez asked the name of the manager of the place and somebody gave the name, Mr. Hinman, and Hinman said he could see him in his office. It is not a fact that I was the man that called up and spoke to Hinman.

On December 28 was when I talked to Chevillard or Patron about meat. I saw them both. Chevillard runs the dining room and Patron takes care of the bar. I first talked to Patron behind the bar. I told them we would get some meat for him if he pleased. Patron said, "You better talk to Chevillard, because he is the one that runs the food business." Then I saw Chevillard in the dining room. I told him about the meat and we might get some meat, that we didn't know how it would work. There was nothing sure about it, but he said he was willing to take meat at any time. I told him from fifteen to eighteen thousand pounds of meat. The price was not really fixed. It was according

to what he would give. According to the quality of the meat. I don't know who said about thirty-five or forty cents a pound. I don't know if I mentioned that or he mentioned it. Chevillard, Patron and I talked about the meat almost every day. One day after talking to Hinman I saw Chevillard and Patron and told them, "We will get the meat for you." That was on Saturday, the 13th, the day Rodriguez came back from the East. I told Patron the chief steward was back from the trip and as soon as we found out how we could get the meat I would let him know. I told Chevillard the same thing. On the night of the day we first saw Mr. Hinman I saw Chevillard and Patron and told them [119] we saw the manager during the day and were talking about how to get the meat. I told whichever one I spoke to that I thought I would be able to get some meat. That is all that was said. On Wednesday in the evening, about nine or ten o'clock, I spoke to Patron first at the Normandy and told him that we were talking to the manager of the meat company and I told him we had 30,000 pounds of meat they had left on board the ship and that nobody knew about it and that we could get one truck load from the meat company and send that meat to them. I told Chevillard the same thing. The talk lasted about ten or fifteen minutes with each. There were people in the place. Chevillard was busy running the dining room and Patron was busy behind the bar. On Thursday, between seven and ten o'clock at night I asked Patron if he knows a party who could

drive a truck. It was the day Hinman told me he could not get the truck driver from the company. I spoke to Patron about the truck driver and not to Chevillard. Patron told me they had somebody on hand. He said he "might have somebody to drive the truck." Patron told me he couldn't get a truck driver so I had to look for a driver myself. I didn't look until Tuesday, the 23rd, after the bill had been signed by Brandt-Neilsen. I found a truck driver in the Hotel Espagnol, in the bar. I knew Mr. De Angury before that. I had just seen him around. He is not a truck driver but I know he could drive a truck—I supposed so. I did not go into the hotel looking for De Angury. I was looking for somebody that I knew who could drive a truck. Up to this time I had not had any talk with De Angury. He was drinking at the bar and we left the bar together and went to the Normandy Restaurant. Patron was there. Chevillard was not there. I told Patron I had found a truck driver and that this was the man. When I found De Angury he was drunk. He was having too many drinks. He was pretty close to being drunk. After I found De Angury I was in the [120] Normandy Restaurant about three or four minutes. Then we went to the truck driver's home where we were about five minutes and De Angury changed his clothes. Then Patron took us in his car to where the truck was, where we arrived about four or five in the afternoon. We arrived at the place where the truck was unloaded about eight or nine o'clock. It took us four hours

to get to Millbrae as we got stuck with the old truck twice on the road. First the battery went out and we had to get a new battery. Then something went wrong with the light. We were stopped on the road by a policeman who gave us a tag for poor lights. It was a meat company truck and it had the name of the meat company on it. De Angury drove the truck for two or three miles but he didn't know how to drive the truck. The garage man who repaired the battery got in and taught him how to operate the truck. We were following Patron.

I got the first map from Chevillard on January 22, in the evening. It was the one on the envelope. It was my envelope and Chevillard drew that plan on it. I had that envelope with me on the 23rd. When we were in the garage and they were fixing the light Patron drew a map. I didn't tell him I already had a map.

When we arrived at the place where the meat was to be unloaded there was Chevillard, Patron, Jacky, the truck driver, and myself. Jacky said where to put the meat. Chevillard, Patron, De Angury and I actually unloaded the meat. I was in the truck handing it out to the people that were on the ground and they carried it away. It took an hour and a half or two hours to unload the truck. The place was lighted inside. There was not much light on the outside. After all the meat was unloaded Chevillard was figuring how many pounds there was there. Chevillard signed a bill with Mr. Jacky and he put my name on it. It was the bill that Mr. Jacky gave to him, the receipt for the [121]

meat and Chevillard signed my name. When I came up it was already signed. I said to Chevillard, "What are you signing my name for?" and he said, "It don't make no difference." I did not tell Chevillard to either sign or use my name.

I never had any talk with Chevillard or Patron as to how they were going to pay me for the meat or when they were to pay me. The only time I ever talked with Chevillard or Patron about being paid for the meat was that they said that they would pay thirty-five or forty cents a pound, depending on the quality of the meat. I knew the price of the meat would be somewhere around four or five thousand dollars. I never had any talk with them when they were going to pay me the four or five thousand dollars or how they were going to pay me.

By Mr. Resner:

I made three trips on the Sea Perch. On the first two trips I was a chef. I met Rodriguez in New York when we were waiting for the Sea Perch. I joined that ship when she came out of the shipyards. (It was here stipulated that the witness was at the present time in jail.) I don't expect to get off easy because of what I am saying here in court. I am just willing to pay for what I did, that is all. I can't do nothing else. Before the ship arrived in San Francisco in December, 1944, I was second steward and storekeeper. The duty of storekeeper is to issue the merchandise, the meat or store and fruit and all the vegetables, to the cooks and to the army and to go through the ship stores to see what is there. Before the ship sails it is my job to

walk in the storeroom and in the ice box. I knew or had the opportunity to know just what is in the storeroom. Two days before the vessel arrived in San Francisco I approached Mr. Rodriguez with a list of what was in the storeroom. I gave him the inventory I made. He did not comment about the fact that there was a lot of meat over. This last trip he told me [122] the average of the food cost was eighteen cents a meal. When he looked over and checked my figures he did not say it was 23.05 cents a meal. I don't remember that. He told the Captain of the ship in front of me that the food cost was eighteen cents per man every meal. Two days before we got to San Francisco Rodriguez told me that he ought to make some deal to sell the meat. He did not say that I should take the meat off the ship and sell it. Nobody can take the meat off the ship unless they get o.k. from the skipper. Rodriguez told me I should make some deal to sell the meat—to see the manager of the meat company and see what we can do about it. I did not go to Rodriguez and say, "There is this meat over on the ship and we ought to take this opportunity and make some money." That was his idea, not mine. It was on Tuesday, January 16, that we called Hinman at the Heuck Company. Rodriguez called first and I called after him. After the first interview I got with Mr. Hinman, from the 17th to the 22nd, I am the only person who called up Mr. Hinman. I was with Rodriguez when he made the first call. It was from some lunch place in San Francisco near the meat company. I don't know the street or

the name of the lunch place. I called again about fifteen minutes after Rodriguez had called. As soon as they answered the phone I handed the phone to Rodriguez. I could only hear what Rodriguez was saying. He said, "We will be right there." In Hinman's office there were Hinman, Rodriguez and myself. Rodriguez opened the conversation. He say he had a business proposition and if Mr. Hinman want to go in it, it will be all right. If not, just to forget it. Then he explained to him he has 25,000 pounds of meat on board the ship and if there was any way to sell the meat. Mr. Hinman said that the company can't do that because they only supply the ship and there is no other place where they can sell the meat. Rodriguez said that if Hinman will go in on the deal he will get one-third, I will get [123] one-third and Rodriguez will get one-third. Rodriguez said he has some meat on the ship that nobody knows about and he will let the company hold so much meat and sell to some other place, some restaurants or some other place. Rodriguez said that the company will sell the meat to someone else. Hinman said, "I can't say anything now. You come back tomorrow, one of you get lunch with me and see what we can do about it." Rodriguez told Mr. Hinman to forget what we were talking about. I did not do any talking in this conversation. I did not say a word, all the talking was done by Rodriguez.

On January 17 I met Hinman at the 'Tadich Grill for lunch. First I phoned him to tell him I was waiting for him. Hinman gave me his phone

number on the 17th or 18th. After the first time Rodriguez went up to see Hinman he never saw Hinman again and he never talked to Hinman again on the telephone so far as I know, because he has to stand by on the ship. After the first meeting I did all the telephoning and all the visiting. I made all of the arrangements and from then on it was my idea to carry this thing through. When we left Hinman's office Rodriguez did not say that he was crazy and he didn't say that I was trying to involve him in this whole thing.

On January 18 I saw Hinman and we talked about the truck driver. Hinman said he would get the truck driver. He said he had to talk to a man he could trust. Hinman knew from the first day we met with him how we were going to sell the meat.

On January 19 I met Hinman at Montgomery and Sacramento Streets and went to the Palace Hotel with him where Mr. Hinman gave me a copy of the list. I told Mr. Hinman I wanted choice cuts of meats. He phoned his office and called out the different percentages of meat to me which I wrote down on a paper. I kept that paper. The writing on the right hand side is my writing. I kept the paper in my possession and the Federal Bureau of [124] Investigation took it away from me when I was arrested. I showed the papers to Rodriguez the afternoon of the day I got it or the next day. Rodriguez said, "Just keep on going." Mr. Hinman told me that whenever I talked with him over the phone to just say that my name was "Joe."

That was Hinman's idea. At the Palace Hotel Mr. Hinman told me to phone the next day and ask for Frank which I did. Mr. Hinman answered the phone. He said he couldn't take a chance with that man and to come to see him the next day. He meant the truck driver. On Saturday is when he told me that he would park the truck on Sansome Street; that he couldn't trust his truck driver and that I should supply a truck driver. We took a walk and he told me that is where you are going to see the truck, going to find the truck the day the meat was supposed to be delivered. I said that the bill would be on the seat. He didn't tell me that I was being followed by the FBI, or that this was dangerous business and wrong and I should drop it. On the day the meat was to be loaded on the ship I phoned Mr. Hinman and asked whether the truck and the delivery tag was where it ought to be. He told me it was on Sansome Street. On January 22 I did not have to report to the ship at any time because that was my week off. My week was not the week before. I was not supposed to be on the ship at eight o'clock on the 22nd. Mr. Rodriguez is my chief officer and I take orders from him on the ship. I never report to him. Maybe on January 22 I didn't get on the vessel until noon time. I told Mr. Rodriguez I had been in jail over night and I was in jail for three hours for being drunk. It is not a fact that on January 23 I was due on the vessel at six o'clock in the morning. On the 23rd I came on the vessel at nine or eight thirty o'clock. That is when the lady drove me down

there, left me there. It is not a fact that I did not come aboard until eleven o'clock and told Rodriguez that I had been out all night and had been drunk. I told Rodriguez that on [125] Monday and not on Tuesday. After Mr. Neilsen signed the bill I took it and personally gave it to Mr. Hinman.

Mr. Rodriguez never talked to Chevillard or Patron about the meat in front of me. Any time Rodriguez went to the Normandy Restaurant, which was almost every night, he just went there to eat. I always spoke to Chevillard and Patron because I spoke French and Patron spoke French. Patron, Chevillard and Rodriguez and I all speak English. I found the truck driver by myself. That was my idea.

By Mr. Abrams:

As soon as the meat gets on the boat it goes right into the freezer and the minute that meat off the trucks got onto the boat it went right into the freezer. The truck was driven by De Angury to Millbrae on January 23. I do not know what time the truck was put on the street by the meat company. There was no special time that I was supposed to leave San Francisco with the truck. I expected to leave in the morning or some time in the afternoon. On the 22nd I knew that the meat was to be put on the street and had to be taken away. On the 22nd I believe that around eleven or twelve or one o'clock we would take the truck away. It was between four and five in the afternoon when the truck left San Francisco. The reason for the de-

lay was that there was an Army man on the pier and we were waiting to get the pier clear. Four hours were lost on that account.

The first time I saw Mr. Jacky was that night we went to his plant about nine o'clock. I never heard of him before and never heard his name mentioned before by either Chevillard, Patron, De Angury or Rodriguez. I never heard of the Millbrae place or the storage plant before.

When all the meat was unloaded and the weights marked down Mr. Jacky indicated the total weight which I think was 17,500 pounds. After that Mr. Jacky made out a bill and asked whom to [126] charge it to. Chevillard put my name in, he indicated my name and my name was put in the bill. Jacky gave the original or a duplicate of the storage receipt to Chevillard, which showed the total weight of the meat. Mr. Jacky was surprised that there was so much meat. He said he didn't expect that much meat. I asked Chevillard why he put it in my name. I think I spoke to him in French. Down there I spoke mostly in French to Chevillard and Patron.

It was in the evening of January 22 that I first learned that the meat was to be taken to this plant at Millbrae. Chevillard told me that at the restaurant.

By Mr. Zirpoli:

(Here defendant Vincenzini stands up.)

I had never seen Mr. Vincenzini at any time before or after my arrest. I never heard him men-

tioned or discussed by anyone at any time prior to my taking the meat to Millbrae or after I got to Millbrae with the meat. I never heard his name mentioned by any person. I never saw him, never heard of him.

Redirect Examination

By Mr. Hammack:

When the ship arrived in San Francisco to the best of my recollection there was maybe 25,000 pounds of beef alone on it. Counting lamb and pork there was from thirty-five to forty thousand pounds of meat on the ship when we arrived in San Francisco. When I left Rodriguez on the afternoon of the 23rd he said, "I see you tonight." While Rodriguez was in New York I did not have any time off and was on duty every day on the ship until his return. Following his return I had about a week off, which was the week in which I was talking to all of these people. [127]

Recross Examination

By Mr. Friedman:

I arrived at the figure that there was from 35,000 to 40,000 pounds of meat on the ship because we have two boxes on the ship. One is No. 2 and one is No. 4, and when that box is full there are about 80,000 pounds of meat and that box is almost half full and that is why I figure there is 40,000. That is my estimate. When I made the inventory before I came into port I did not put the exact pounds

down for each item. I just averaged the weight to be about 100 pounds for each case. When I say there was about 30,000 or 40,000 pounds of meat there, there might have been more or there might have been less. While we were unloading the meat at Millbrae nobody said not to say anything about where the meat was or where it was stored.

I pleaded guilty in this case. I do not know that there are three charges in the indictment. I know that I am in court. That is all I know.

Exception No. 10

Q. You pleaded guilty, but you don't know how many charges you pleaded guilty to, is that right?

A. No, I don't know how many charges.

Q. Do you know how long you could be sent to jail?

Mr. Hammack: I certainly object to that as improper cross-examination, immaterial, irrelevant, and incompetent.

The Court: I will sustain the objection.

Mr. Friedman: Might I call the Court's attention to this?

The Court: I do not think it is necessary to argue this. You have made your objection and I have ruled on it.

Mr. Friedman: May we have our exception?

The Court: Yes. [128]

Testimony of George M. Kinelle for the United States.

GEORGE M. KINELLE,

produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

Direct Examination

By Mr. Hammack:

I am a chef. I know Mr. Chevillard and Mr. Patron. On January 16, 1945, I had a conversation with Mr. Chevillard in the Normandy Restaurant. I talked to him in French. He was very busy that day and I sit down with Jerry, a chef, and after I sat down for the meal, Mr. Chevillard come around to see that everything is correct and then I ask to buy a small steak and I mention to him how small this steak was and he said that meat was hard to get. And I said, "I know that myself." And he said, "Well I have got some people who have some meat—some party who has some meat." He did not say how much meat and he asked me if I know somebody if he would like to buy some meat and I said, "I can find somebody to buy meat. I know chefs who might want to buy some meat." And I said, "Maybe if you have a party who has meat you can sell it to somebody who wants meat." I asked him where the meat came from and he said that was his private business, that he could not tell where that came from. He never told me where he got the meat.

He told me he would let me know. He never said how long it would be before he would let me know. I went back to the Normandy Restaurant on the evening of January 23, 1945, about eight or nine o'clock. Neither Chevillard nor Patron were there. I left a note for Mr. Chevillard. The small piece of paper you show me is the note I left. I left a note for 15,000 pounds of meat. I put the price of 75c a pound on the note.

(At this time the note was marked for identification as United States Exhibit 13.) [129]

Cross Examination

By Mr. Friedman:

I left this note on the 23rd with the lady there, the hostess. On January 16 I went to the Normandy with Jerry. I am working at the Troc, 3565 Geary Street, as a chef. On January 16 I was served a small steak at the Normandy Restaurant. When I said I bought a small steak I mean I ordered a small steak. I mentioned to Mr. Chevillard how small this steak was. Then Mr. Chevillard and I had a talk about how scarce meat was. Chevillard said that he knew some people who had meat and he asked me if I would purchase any of it. I told him I would find out. I knew everybody wants meat and I told him I would try in the Club and see if they would want to buy some. I am talking about the Chef's Club where other chefs come and eat. All the chefs talk about where they can get some meat. They ask where you can get some meat because

you can't get enough meat to run a restaurant. So I said I would take orders. Mr. Chevillard did not say that he had the meat to sell. He told me he had a party who had some meat to sell. As a result of that conversation I went up to the club and talked to some other chefs and then came back on the 23rd and left an order for 15,000 pounds of meat.

By Mr. Zirpoli:

I came back and ordered 15,000 pounds of meat. If he wanted to sell that I would bring the parties in to do business. I had no discussion with Chevillard about points for the meat. I left an order for 15,000 pounds of meat and I said if he would get it I would bring the parties there. I didn't ask about the points to pay for it. [130]

Testimony of Homer Barger for the United States

HOMER BARGER

produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Hammack)

I am a private in the United States Army and was such in January, 1945. I was on duty checking meat on the pier in Oakland on the Steamship Sea Perch, on January 23, 1945. I was checking the

meat to see if the meat was in good condition and if it was frozen good and hard and to see that the meat went on the ship before it thawed out. I did not check for the weight or anything like that.

Cross Examination

(By Mr. Friedman)

On that day I was about the pier at all times. I came when the truck loads of meat would come in and unload and I would check it and then I would go off somewhere. I went from the captain's office to the pier about 8:30 that morning and I was there off and on until there were no more truck loads of meat. I finally left about ten o'clock that night. Between truck loads I would go up to the captain's office sometimes and sometimes go on the other piers and walk around and take a smoke. I didn't know any of the people around the pier or any of the personnel of the ship. I did not know either Rodriguez or Barral. I talked to them but I didn't know them. I talked to the chief steward that morning about nine o'clock. The meat got aboard the ship within a few hours that day.

Testimony of Joseph Mancini for the United States

JOSEPH MANCINI

produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows: [131]

Direct Examination

(By Mr. Hammack)

I operate a service station in the 5100 block on Third Street, in San Francisco, and was there on the evening of January, 23, 1945. The Ed Heuck meat truck did not come into the service station. It was stalled up the street aways. A man came in, in connection with the battery. I went out with him to where the truck was and brought the battery back and charged it and then went back and put it in. I drove up with the fellow to the truck in his car. I see the man in the courtroom now. (Here the witness identifies the defendant Patron.) I placed the battery in an old truck. It was a big meat truck. I did not see that man any more after I replaced the battery. He took me up to put it in. There were two fellows there—one truck driver and another man.

Cross Examination

(By Mr. Friedman)

This gentleman that I pointed out as Mr. Patron came into my place and said there was some battery trouble with the truck. This was about 6:15 or 6:30. He wanted to know if I would go up and fix it. I drove up with him in his car, took the battery out of the truck, put a fifteen minute charge in it and took it back. I brought the battery back to the service station, charged it and took it back. I took the battery back with my truck. I did not

see Mr. Patron again after he drove me back to the service station with the battery.

(Here an adjournment was taken until March 9, 1945, at ten o'clock, whereupon the following proceedings were had.)

Testimony of Sarah Hughes for the United States

SARAH HUGHES

produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows: [132]

Direct Examination

(By Mr. Hammack)

In January of 1945 I was employed at the Normandy Restaurant at 1326 Powell Street, which is operated by Mr. Patron and Mr. Chevillard. I was on duty on the night of January 23, 1945. Patron and Chevillard were there around eleven o'clock on the evening of January 23. They had not been there prior to that time on that evening. I know the defendant Julio Rodriguez. He was in the restaurant on the night of January 23, 1945, in the evening around closing time. We close about a quarter to twelve. During that evening I saw a man named Kinelle. I know him. He left a note with me for Mr. Chevillard. I really do not know whether Government's Exhibit 13 for identification is the note left by Mr. Kinelle for Mr. Chevillard. I gave the note to Mr. Chevillard.

Cross Examination

(By Mr. Resner)

I do not know the first time I saw Julio Rodriguez. It was before January 23. I could not say how many times he had come into the restaurant. I think he has been there several times. I knew him as a customer. I imagine he has spent the evening there. I remember that he stayed until closing time on January 23 because I was talking to him during the evening. I had talked to him on other evenings. January 23 was kind of quiet and I spent a little time with him. So far as his presence there on the night of January 23 is concerned and my talking to him that was no different than any other time.

Testimony of Michael Sterks for the United States

MICHAEL STERKS

produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows: [133]

Direct Examination

(By Mr. Hammack)

I am a sergeant in the United States Army and was on duty on the Sea Perch on her last voyage as mess sergeant. My duty was to see that the food was prepared, to have the crew in the galley in working order and our main object is to see that the troops are fed. The Sea Perch is a troop

transport. While on that ship I knew Mr. Rodriguez, the chief steward.

Upon return of the Sea Perch, at San Francisco, on December 28, 1944, I roughly examined the ship's stores so far as they pertained to the meat on the ship. In civilian life I was a merchant, meats and groceries and a municipal meat inspector working for a while in the city of Gilbert, Minnesota. I made my examination of the meat in the following manner: I went in with the second steward and just roughly, by looking at it, I have a fairly good idea. There was 45,000 to 50,000 pounds of meat left aboard the ship. I would say there was approximately 35,000 pounds of beef.

Cross Examination

(By Mr. Resner)

When this vessel came back to San Francisco I went aboard the vessel with an inspector's team from the Inspector General's Office at Fort Mason, which are approximately eight or ten officers. Rodriguez and three or four of the officers were there when I went to the ice boxes. While doing that they asked Rodriguez why he had a certain amount of meat on board the ship so long. It was packed in May of 1944, and they asked why wasn't it used before. I don't recall or did not hear what Rodriguez said. According to my estimate there was 40,000 or 50,000 pounds of meat on the ship when she returned. There were five ice boxes, two of them had meat in them. There was poultry in the ice box with the meat. When I made this estimate I did not [134] write it down nor did I

keep a check on each ice box. I just looked it over and guessed as to the amount. I did not take any inventory. I would not say that I could be mistaken in my estimate as much as 10,000 pounds. Most of the meat is in cases and it is not hard when you know that you have been using about 1,000 pounds of meat a day, you can get a fairly good idea of how much is received from time to time and how much is left. I did not know how much meat was on the Sea Perch when she left. I used the figure of a thousand pounds being used a day, which told us how much was left at the end of the voyage. I do not know how much meat was on that vessel when she first departed from San Francisco. I arrived at the figure of 40,000 and 50,000 pounds just by seeing the meat there, just by looking at it, without counting it. I had arguments with Rodriguez on this trip. I did not get along with him very well. I had nothing personal against him. The first time I discussed my testimony with the United States Attorney was approximately a week ago at which time I first discussed it with the Federal Bureau of Investigation. I was anxious to help the Government in this case.

Testimony of Thomas P. Dowd for the
United States

THOMAS P. DOWD

produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Hammack)

I am a special agent of the FBI and was such during the month of January, 1945. On January 20, 1945, I saw Mr. Barral at Montgomery and Sacramento Streets, in San Francisco, where he was joined by Mr. Hinman. I followed Mr. Barral around the financial section of San Francisco and eventually out to Broadway, in San Francisco. He walked around the financial section with [135] Mr. Hinman for about fifteen minutes, went down to Market, up Market to Stockton, and out to Broadway, and then into several restaurants around Broadway and Powell Street. He went into the Normandy Restaurant. Later in the afternoon I saw Mr. DeAngury with him. Barral and De Angury went on Broadway above Stockton Street and then they got into a Ford automobile and drove to the Normandy Restaurant with two other men. I did not recognize the other two men. On January 23 I saw Barral and De Angury in a truck of the Ed Heuck Company, about 4:30 in the afternoon. They got into this truck and drove out Third Street and Bayshore Boulevard. I saw another man at the time I first saw them in the truck but I could not recognize him. I followed the truck. It went out Third Street on to Bayshore Boulevard and after passing South San Francisco airport made a right turn into Millbrae Avenue to El Camino Real and a left turn there, went up two blocks and then into the Millbrae Dairy Company. During this trip I did

not see any of the other defendants in this case. I saw a car that I understand belonged to one of the defendants. I did not see the unloading of the truck.

Testimony of William J. Hurley for the
United States

WILLIAM J. HURLEY

produced as a witness on behalf of the United States being first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Hammack)

I am a special agent of the Federal Bureau of Investigation and was such on January 23, 1945. I first saw a truck with the Ed Heuck name on it when it was parked in Key Street just off to the right of Third Street just before the Junction with Bayshore. I never got close enough to the truck on its way down [136] to recognize the people in the truck. The truck ended up at the Millbrae Dairy. The first time I specifically observed any of the defendants in the case was at approximately five minutes of six when we were proceeding south along Third Street. A dull dark green car, a four door Ford, pulled out of Key Street and made a left turn into Third Street, going north as we were going south. I recognized Mr. Patron as the driver of that car. We pulled over to the right along the curb as the defendant Patron drove into a service

station down there. He was in there approximately ten minutes and he came out again and drove back to Key Street and I saw him again the second time. Then after remaining at the truck approximately five minutes or so they drove back to the the service station and I saw them then the third time. The fourth time I went back I did not see him close enough to recognize him. We waited until Patron's car left Key Street and proceeded south along Third Street to Bayshore Highway and followed the car along Bayshore Highway to the turn to the right opposite to Mills Field, leading to San Bruno, and we were directly behind his car at all times along there. I pulled over to a stop sign at the juncture of that street leading into San Bruno and we passed him. We made a turn and another car which was also with us then took the first place in line. We came down and proceeded along San Bruno Avenue into El Camino Real, passed the Millbrae intersection where Mr. Patron's car turned into the Millbrae Dairy, followed by one of our other cars. Then we went back and apparently while we were making some telephone calls the car left because I took up a position opposite the Cross Roads Tavern, at Millbrae Avenue and El Camino Real. At approximately five minutes to nine the defendant's car again came by and passed about fifty feet from me and about two minutes later the truck came along and a few seconds later one of our cars followed it. It is a few hundred yards [137] north of the Millbrae Dairy where I saw the three cars turn toward the Millbrae Dairy.

I did not actually see the cars go into the Millbrae Dairy.

I was at the Millbrae Dairy when the meat was trucked up again and brought to the San Francisco warehouse. I witnessed marking the meat and loading on two trucks, and drove up to the Quartermaster's Depot at Fourth and Channel Streets where the meat is presently stored. I assisted Agent Johnson with making the inventory of the meat. I handled each package and called off the figures, examining the gross and net to be sure we weren't making any mistakes of the weight and he wrote them down as I called them. This inventory was from the meat removed from the Millbrae Dairy.

Testimony of Dallas A. Johnson for the
United States

DALLAS A. JOHNSON

produced as a witness on behalf of the United States being first duly sworn, testified in substance as follows:

Direct Examination

(By Mr. Hammack)

I am a special agent of the Federal Bureau of Investigation and was such from January up to now. I made an inventory of certain meat recovered from the Millbrae Dairy and now in storage in the Army Warehouse in San Francisco.

(The inventory made by the witness was admitted in evidence and marked U. S. Exhibit No. 16.)

The total number of pounds on that inventory is 17,832 and the total number of pieces is 321. I broke down the items into the different kinds of meat. Government's Exhibits 7A, B and C, consisting of this carton, case and sack, are part of the lot of meat as stated in my inventory. All of the similar boxes and cartons and sacks were so marked. [138]

I totaled up the weights of meat as reflected on the tag, Government's Exhibit No. 5. The total weight is 64,793 pounds. The delivery tag, Government's Exhibit No. 9, bearing the signature of Rodriguez, I totaled that up and such total weight is 64,793 pounds.

I totaled up the amounts on Government's Exhibits No. 2, the inventory, plus certain items of meat as reflected on page 9 of the inventory, which part has not been offered in evidence, and the total amount of meat in the entire inventory was 33,104 pounds. The total amount of beef was 19,584 pounds. Those figures do not include the poultry nor the meat which was contained in cans. (Here sheet 9 of the inventory was admitted in evidence as part of Government's Exhibit 2 in evidence, subject to all the objections defendants Chevillard and Patron originally made to Exhibit 2.)

Testimony of Ronald A. Wilson for the
United States

RONALD A. WILSON,

produced as a witness on behalf of the United States,
being first duly sworn, testified in substance as follows:

Direct Examination

By Mr. Hammack:

I am a special agent of the Federal Bureau of Investigation. In such capacity I talked to the defendant Chevillard in this case at the San Francisco field office of the Federal Bureau of Investigation on the early morning of January 24. A special agent, by the name of Lee M. Fallaw was present. At that time I took a statement from Mr. Chevillard and also took from him some papers and notebooks. The document you show me dated January 24, 1945, is the statement taken from Mr. Chevillard on that date. Each page is signed by Mr. Chevillard. [139]

Exception No. 11

Mr. Hammack: At this time we will offer this statement in evidence as against Mr. Chevillard only.

Mr. Friedman: I will object to it on the ground that it is a mere narrative of past events, and that neither of the offenses charged in this indictment has been established and therefore that extra judicial statements are inadmissible until the corpus delicti has been established.

The Court: I will overrule the objection, and an exception may be noted.

Mr. Friedman: It will be understood that my objection is as to each count of the indictment?

The Court: Your objection goes to the introduction of the exhibit, doesn't it?

Mr. Friedman: In so far as each count is concerned; in other words, I wish my objection to appear as three objections, one to introducing it in support of the first count, the second count, and third count of the indictment.

The Court: I have never heard of that being done, but if you wish it you can have three objections and I will make three orders overruling them and three exceptions.

Mr. Friedman: Yes, because it may be admissible on one count and not admissible on the other.

The Court: All right.

(The statement of Fernand Chevillard was marked U. S. Exhibit 18.)

That notebook I took from Mr. Chevillard, he had it in his possession at the time he was interviewed at the San Francisco field office, on January 24, 1945. The carbon copy of a receipt of the Chip Steak Company, Pierre Barral, 415 Jones Street, was in Chevillard's billfold at the time he was questioned. The paper bearing the name of A. Vincenzini, 540 San Antonio [140] San Benito, Telephone SB-87, was found in Mr. Chevillard's topcoat pocket at the time he was at the San Francisco field office on January 24. Government's Exhibit 13 for identification, was found inside of the notebook. When we got to the

San Francisco field office I asked Mr. Chevillard if he minded if we went through his pockets to see what he had on his person, his pockets were emptied out on the desk in the room there and that is how we acquired possession of these items, the notebook, the receipt and the address.

(The notebook was marked U. S. Exhibit 19; the Chip Steak receipt was marked U. S. Exhibit 20; and the address was marked U. S. Exhibit 21, all in evidence only against the defendant Chevillard.)

The statement of defendant Chevillard, U. S. Exhibit 18, reads as follows:

“January 24, 1945
San Francisco, California

I, Fernand Chevillard, hereby make the following voluntary statement to Special Agents Ronald A. Wilson and Lee M. Fallaw of the Federal Bureau of Investigation, first having been told by them that I have the right to have an attorney, that I do not have to make any statement and that any statement I do make may be used against me in court. No threats or promises have been made to me and no inducements have been offered me. I have known Pierre Barral for about six months. He would come to the Normandie Restaurant to see me and my partner, George Patron. I knew that Pierre Barral was a chef on ships. About two or three months ago Barral offered to sell me some meat off his ship, but I did not buy any. For the past ten days Barral has been coming to the Normandie Restaurant from

his ship. About Thursday or Friday, [141] Jan. 18 or 19, 1945, Barral came to the Normandie Restaurant and told Patron and me that he was going to have about 15,000 pounds of meat to sell, that this meat was to be bought for the ship, 30,000 lbs. in all, but he wouldn't need it all on the trip and wanted to sell 15,000 lbs. of it before it was put on the ship. Barral offered to sell me 15,000 lbs. of New York Cuts, Filets, rib and lamb at 40c per pound. He said he wanted to sell the whole 15,000 lbs. at the same time. I told him I was broke and couldn't buy the meat, but that I would inquire around to see if I could find anyone to buy the meat and I told Barral I would also try to find a place for the meat to be stored. Every day after that Barral asked me if I had found anyone to buy the meat or if I had found a place to store it. Barral told me he would have the meat in a truck and we had nothing to worry about except to find a place to store the meat. George Patron was present when Barral made this statement. This agreement to try to sell the meat and find a storage place for it was between Pierre Barral, George Patron and myself. We did not have an understanding about what payment was to be made to Patron and myself for finding a purchaser for this meat or for finding a storage place for it, but I expected to receive some payment from the purchaser of the meat or to profit in some way from this transaction. After having discussed the matter with Barral I made inquiries of several persons as to whether they would be interested in purchasing this meat. I also made inquiries regarding refriger-

ator space to store the meat. Angelo Vincenzini, a butcher who lives at 540 San Antonio Ave., Lomita Park, Calif., told me he thought I could get storage space for the meat at Millbrae Dairy and then advised me there was [142] storage space there which I could get. That night at the Normandie Restaurant I told Barral and Patron there was storage space available. Barral said the truck driver didn't want to come and I said "the deal's off" because I realized the deal was wrong. Barral had told Patron and me that the meat belonged to the Merchant Marine. On Jan. 23, I was at 35 Lake St., when I got a phone call about 4:30 p.m. from Mrs. Patron, who said George Patron had told her to get in touch with me by any means possible and tell me to go to Millbrae. I then drove to Millbrae in my car and saw Mr. Jacky of the Chip Steak Co., who has the Millbrae Dairy. I told Mr. Jacky I had come for the storage space that Angelo Vincenzini had talked to him about. I then waited for the truck with the meat to arrive. I knew that George Patron would accompany the truck. Between 8:30 and 9:00 P. M., Patron came in his car to the refrigeration plant. Barral was in the truck with its driver, Lucian, whom I know by sight, when it drove up at the same time. Mr. Jacky was the only other person present. Patron, Barral and the truck driver unloaded the meat from the truck while I checked the weights of the meat with Mr. Jacky. I kept a record of the weights in my address book, notations indicating the total weight of the meat was 15,875 lbs. After the truck was unloaded Mr. Jacky asked me in whose name

the receipt should be made and I told him Mr. Barral. The copy of the receipt was given to me instead of to Mr. Barral as Mr. Barral was absent changing his clothes at the time. However, the receipt would probably have been given me anyway, so I could get the meat for a purchaser if I had decided to go through with the deal, as Mr. Barral was leaving town in a short time. I paid Mr. Jacky \$30 [143] of my own money on account for storage, which was to be at one cent a pound per month, and we agreed to settle the balance the next day. I made these arrangements with Mr. Jacky. The receipt was turned over by me to Special Agents Wilson and Fallaw on Jan. 24, 1945. I also turned over to them my notebook showing notations I made checking the meat off the truck. After the truck was unloaded I told the others that I would see them later and drove back to San Francisco alone in my car. I have not discussed the meat with anyone since that time. I got back to the Normandie Restaurant about 11:00 P. M. The hostess, Mrs. Sarah Hughes, gave me a slip of paper on which was written 'Order for 15,000—about 75'' and which bore the signature of George, the chef at the Troc, a night club on Geary Blvd. I had discussed the meat with George and told him I knew where he could get meat, and I took this note to mean he would buy 15,000 lbs. of meat at 75c a lb. The price indicates to me that he wanted filets or New York cuts. I had also talked to Angelo Vincenzini and told him he could probably get some of this meat at 40c or 50c per pound. He said he might be interested in buying some of the meat

later. I told Angelo Vincenzini all about the meat and where it was coming from and how it was being obtained, and he said he wanted to stay out of jail. This was on Monday, Jan. 22, 1945. During the past five or six days I mentioned this meat to several other chefs, whose names I do not know, thinking they might want to buy some of the meat.

I have read this statement on five pages and it is true.

FERNAND CHEVILLARD.

Ronald A. Wilson, Special Agent, FBI—1/24/45.

Lee M. Fallaw, Special Agent, FBI, San Francisco, California.” [144]

Cross Examination

By Mr. Friedman:

The paper signed by Mr. Chevillard was written by Special Agent Fallaw. I did not write any part of it. The statement was taken on the early morning of January 24, 1945, between the hours of 2:30 and five o'clock. Mr. Chevillard was taken into custody at about 1:10 at the Normandie Restaurant and was removed from there almost immediately to the San Francisco Field Office of the Federal Bureau of Investigation, where he was kept until 5:30 in the morning. The statement was signed probably about five o'clock in the morning. I did most of the questioning of Chevillard. I spoke to him in English and had no difficulty in understanding him and he had no difficulty in understanding me. The me-

chanics in taking the statement were that I questioned him and then we would decide on how he wanted to say each thing and that was put into the statement. I would question him and he would answer and sometime his answer was not in a form that would go down and we would have to straighten it out—I mean we would have to ask him some questions so as to get his statement, that is his answers were not responsive at all times. We did not have a stenographer there and nobody took down the questions and answers stenographically or with a machine nor was there anything to preserve a record of what was actually said or done. Sometimes his answer would be long and rambling and sometimes it was not responsive to the question and we would have to ask the same question several times before we got a responsive answer. On other times we thought his answers was immaterial to the question that had been asked. There probably were questions that were asked and do not appear and there were answers given that do not appear in the statement. He gave several explanations when we were asking him about things pertaining to Barral [145] and to the meat. It took us from about 1:30 until five a. m. to acquire the information from Mr. Chevillard that appears in this document. It took approximately 3½ hours. Mr. Chevillard did not tell us that he understood he had the right to have a lawyer. He was told that. He did not use the words that he was willing to make a free and vountary statement. We asked him, we told him we would like to ask him some questions about this matter. He

was asked if any threats or promises had been made against him or to him. We had not made any. You usually include that in the statement. I asked him if any threats or promises had been made to him and he said no, that was at the time the statement was being made. The statement was not being written during the whole 3½ hours. It was not being put on paper. We started to write the statement when we thought that Mr. Chevillard was giving us the information that was true. He did give information that I did not think was true. It consisted mostly of denials on his part. He first denied that he had any dealings with Barral outside of the fact that he had gone out to get the refrigerator space for him. He made that denial just once. He denied that he was going to profit on the sale of this meat or from this transaction. He denied that he was going to receive any of the meat. He denied that there had been any agreement between himself and Barral. In fact he denied almost every question we put to him first. He made these denials for about an hour. That is, up to somewhere around half past two. He did not deny that he knew where the meat was supposed to come from or go to. During the first hour he said that he knew it was meat that was to go to Barral's ship, and that it was going to be put on a truck and that Barral was going to get a truckload of meat. During the first hour Mr. Chevillard said that he did not have the money to purchase the meat. He did not say that he never agreed to purchase it or never intended to [146] purchase it. We asked him whether or not he intended to buy the meat and his reply

was that he did not have the money to buy the meat, that Barral wanted to sell all the meat at one time and he did not have the money to buy it. He told us he knew Barral about six months, that Barral had first come to the Normandie Restaurant about six months previous to the time we talked to him. He said that two or three months previous Barral had approached him about selling him some meat from his ship and that he told Barral he could not use any.

To a certain extent the words used in this written statement are the words used by Mr. Chevillard. I thought he spoke English quite well. He does talk a little broken, yes. This statement really is edited. It was put in a form so that it will read. It purports to be the substance and not the words of what Mr. Chevillard told me—there are some exact words there and some different. When I first questioned Chevillard about Barral first offering to sell him some meat his reply was he could not use any. If it says in the statement “I did not buy any” then he said he did not buy any. I asked him why he did not want to buy any of the meat and Chevillard said he couldn’t use any. I did not ask Mr. Chevillard if Barral had explained to him how he was going to get the meat off the ship to sell it.

Q. Let me call your attention to this particular language which appears on page 2 of the statement:

“This agreement to try to sell the meat and find a storage place for it was between Pierre Barral, George Patron, and myself.”

Q. Are those Mr. Chevillard’s words?

A. I believe he agreed to that statement, in that form.

Q. Isn't it a fact that you had quite an argument with him about the word "agreement" [147]

A. There was some talk about it.

Q. Well, now, what was said about it?

A. He wanted—he said he did not like the word "agreement," and we asked him what he would call it, and he said it was a deal. He said he did not like the word "agreement," and we asked him if it was not true that they had agreed to do this, and he said yes. We said, "Isn't it true that it would be an agreement?" And he said, "Yes," he understood it would.

There was some discussion about the word "agreement" and it was finally agreed by Mr. Chevillard that it was an agreement. I would not say we argued with him. We asked him further questions to try and determine if this was not an agreement. At first Mr. Chevillard did not want the word "agreement" used. Afterwards we agreed that it was an agreement. I asked him if he did not think that it was an agreement and he answered that he thought it was.

Mr. Freidman: Q. I will call your attention to this portion of the statement: "About Thursday or Friday, January 18 or 19, 1945, Barral came to the Normandie Restaurant and told Patron and me that he was going to have about 15,000 lbs. of meat to sell, that this meat was to be bought for the ship, 30,000 lbs. in all, but he wouldn't need it all on the

trip and wanted to sell 15,000 lbs. of it before it was put on the ship."

Did you ask Mr. Chevillard whether or not Barral's conversations were with Chevillard and Patron together, or separately? A. Yes.

Q. What reply did he make?

A. He said he talked to both of them. They were both there at times, and sometimes Barral talked to Patron, and sometimes to Chevillard.

With reference to these statements relative to conversation with Barral I do not recall which conversations took place [148] solely between Barral and Chevillard. When I took Chevillard in custody shortly after one o'clock on the morning of the 24th I told him what he was being arrested for. I told him he was being placed under arrest in connection with a truckload of meat that was taken by Barral from the Heuck Meat Company. I don't recall if I told him anything else relative to the nature of the charge against him. I did not tell him he was being arrested for helping to steal the meat or for helping or causing to be made false statements to the War Shipping Board. I did not tell him he had been arrested because he had made or used or caused to be made, or caused to be used a trick or scheme to conceal a material fact from the War Shipping Board or the War Shipping Administration. I believe we did tell him that the charge against him would be conspiracy to defraud the government. Chevillard did not ask and we did not tell him who he was supposed to have conspired with.

During this 3½ hours, while I was questioning Mr. Chevillard, there were no notes taken. I ques-

tioned Chevillard as to what he was going to get out of this transaction and he said there had been no agreement as to what he was going to get. Later he said that he expected to profit from the transaction in some manner. I asked him how, and he said he didn't know for sure whether or not from the purchaser, but in some way he expected to gain from it. There was quite a lot of discussion about that matter, probably fifteen minutes.

Q. Well, taking your figure of fifteen minutes, it is all summed up, is it not, in these words in the statement as follows: "We did not have an understanding about what payment was to be made to Patron and myself for finding a purchaser for this meat or for finding a storage place for it, but I expected to receive some payment from the purchaser of the meat or to profit in some way from this transaction." Is that right? [149]

A. That is the summation of what he told us.

Q. That is the summation of fifteen minutes' worth of conversation?

A. That is the summation of what I told you. I don't know how long the conversation lasted.

Q. Now, you have this statement here: "Angelo Vincenzini, a butcher who lives at 540 San Antonio Avenue, Lomita Park, California." He told you that he was a butcher that lived in Lomita Park?

A. I think we looked up the exact address and asked him if that was the fellow. I am quite sure that was the way it was.

Q. You looked it up where?

A. In the telephone directory.

Q. And you asked him if that was the address?

A. He had the slip of paper with the telephone number on it, and he said that was the fellow.

Q. So that he actually didn't tell you that Mr. Vincenzini lived at 540 San Antonio Avenue, Lomita Park, California, did he?

A. He said that was the Mr. Vincenzini that he had talked to.

Q. On the bottom of page 2 you have this statement: "Barral said the truck driver didn't want to come." Did you ask him what truck driver he was talking about?

A. No, I don't believe we did.

Q. You didn't ask if it was the truck driver of Heuck that didn't want to come?

A. No.

Q. You didn't ask if it was the truck driver that Barral had procured that didn't want to come?

A. No, sir. [150]

On the top of page 3 of the statement it says, "And I said, 'The deal's off' because I realized the deal was wrong." Mr. Chevillard said that the deal was off and he was asked why he said that, he said that he did it because he was becoming worried about the matter and he was asked if he was worried because he knew the deal was wrong and he said "Yes." The reason I didn't put it in the statement is, it is not supposed to be a word for word question and answer statement, that is the substance of the conversation that took place. We discussed with Mr. Chevillard as to what should go in and what should be left out of the statement. We told him that it was

his statement and that we wanted to get the facts as clear as we could in there, and before something was written down it was restated and asked if it was all right and that is the way he wished to say it. We did not discuss with Mr. Chevillard what should be left out of the statement, of the things he told me in those 3½ or 4 hours. Mr. Chevillard told me what is contained in the statement as "Barral had told Patron and me that the meat belonged to the Merchant Marine." I didn't tell Chevillard that he was wrong that the meat didn't belong to the Merchant Marine, but that it belonged to the War Shipping Administration.

Q. Isn't it a fact what you asked Mr. Chevillard was, "Did you know where the meat was supposed to go?" And he told you Barral told him it was to go to the Merchant Marine?

A. No, sir, I don't think that was the way it was.

Q. You don't think—do you know?

A. Yes, sir.

Q. You have no notes?

A. I recall quite well that point, and that wasn't the way it was.

In reference to that portion of the statement which says that Mr. Chevillard received a phone call while at [151] 35 Lake Street, in which Mrs. Patron told him to go to Millbrae. We had a discussion about that. Chevillard said there was nothing said as to why he should go to Millbrae, that he knew why he should go to Millbrae. I didn't put that in the statement. Chevillard did not say that he started to keep a check of the meat that was being stored at Millbrae

and when he found out it had Government marks, a thing he never knew, that he stopped keeping the record. I do not recall of Chevillard saying that the reason he paid Mr. Jacky \$30 was because Barral said that he had no money with him and asked Chevillard to advance the \$30 for him to pay on the storage. The words in the statement, "The receipt was turned over by me to Special Agents Wilson and Fallaw on January 24, 1945," were not a statement made by Mr. Chevillard. It was put in the statement and he agreed to the statement after it was put in. He read the statement over and said it was true and signed it. After Chevillard signed the statement he was taken to the City Prison and booked. He was taken from the Special Field Office between 5:15 and 5:30, and brought to the City Prison around 5:30 or six o'clock in the morning. There was no further conversation. The statement was signed and I was satisfied.

Redirect Examination

By Mr. Hammack:

Mr. Chevillard read the statement before he signed it. During the 3½ hours he was there we asked him if he wanted something to eat and he said he had just finished his dinner when we had apprehended him. We sent out for some sandwiches and milk. He said he wasn't hungry but he did drink the milk. [152]

Testimony of Herbert W. Schroeder for the
United States

HERBERT W. SCHROEDER,

produced as a witness on behalf of the United States,
being first duly sworn, testified in substance as follows:

Direct Examination

By Mr. Hammack:

I am Supervising Special Agent for the Pacific Telephone Company.

(It was then stipulated that the records of the telephone company showing listings of the South City phone numbers 221 and 83 and San Bruno 87, were in the name of the Palace Meat Company and that A. Vincenzini had signed the cards placing the phone number; that they are so listed in the phone book and that Mr. Vincenzini is one of the owners of the Palace Meat Market; that the phone number Millbrae 727 is listed under the Chip Steak Company and Mr. Jacky is the manager; that Exbrook 9664 is the listing of the Normandie French Restaurant and that the listing was signed by Fernand Chevillard.)

Thereupon an adjournment was taken until March 13, 1945, at ten o'clock, whereupon the following proceedings were had:

RONALD A. WILSON,

recalled as a witness for the United States, testified in substance as follows:

Direct Examination

By Mr. Hammack :

Mr. Fallaw was a special agent of the Federal Bureau of Investigation. He witnessed U. S. Exhibit No. 18 in evidence. At the present time he is in Washington, D. C., on official business and has been there for about four weeks. He will not be back for a matter of weeks. [153]

Cross Examination

By Mr. Friedman :

During the taking of Chevillard's statement there was present Mr. Fallaw, Mr. Chevillard and myself. During the statement Mr. Trichak was in two or three times and I think Agent Lyons brought some food in. None of these other agents besides Mr. Fallaw and myself questioned Mr. Chevillard. During the four hours I stepped out a couple of times and was gone two or three minutes at a time.

GEORGE EDWIN GOODWIN,

recalled as a witness on behalf of the United States, testified in substance, as follows :

Direct Examination

By Mr. Hammack :

I was down at the Millbrae Dairy about January 23 or 24, 1945, and was present when certain meat was recovered by Mr. Heuck of the Heuck Meat Company and agents of the FBI. That meat was

stored at the Millbrae Dairy. I took pictures of some of the meat showing the position it was in and where it was stored. Mr. Jacky pointed out the meat. The picture you show me was taken by me and truly reflect the condition of the meat at the time the picture was taken. The pictures were taken in the Chip Steak Company.

(Here five pictures identified by the witness were admitted in evidence as U. S. Exhibits 8B, 8C, 8D and 8E.)

Cross Examination

By Mr. Abrams:

I went to the Chip Steak Company on January 24, at 12:45 a. m. The meat was stacked right up at the entrance of the freezer, at the front part just as you came in at the door. As far as I could tell the place was a regular cold storage [154] plant—just like the National Ice & Cold Storage plant only smaller. All that acreage down there upon which this plant is situated is known as the Millbrae Dairy. It is a regular going dairy and this storage plant is situated on the property. It is a separate entity.

Testimony of Leslie W. Roberts for the
United States

LESLIE W. ROBERTS,

produced as a witness on behalf of the United States, being first duly sworn, testified in substance as follows:

Direct Examination

By Mr. Hammack:

I am an auditor with the United States Maritime Commission which audits for the War Shipping Administration. Ships operated by the War Shipping Administration, through general agencies, all of the accounts, expense accounts, invoices and all extras, pertaining to the operation of such ships are audited by the War Shipping Administration.

GEORGE HALSTEAD,

recalled as a witness for the United States, testified in substance as follows:

Direct Examination

By Mr. Hammack:

Rodriguez returned from New York or from the East on Saturday, January 13, 1945. Referring to Government's Exhibit 10, I cannot read the printing that is on there in red ink. I have the stamp that was placed on there. It is identical in language with the stamp appearing on Exhibit 10 .

(Here the witness made an impression of the rubber stamp on another piece of paper which was admitted in evidence as part of U. S. Exhibit 10, subject to the same objections made by [155] defendants to the admission of said Exhibit 10.)

Mr. Hammack: At this time, may it please your Honor, I offer in evidence the following exhibits

heretofore entered against the defendant Rodriguez alone, against all other defendants, being Exhibit 1, which is a contract between the War Shipping Administration and the United Fruit Company; Exhibit 2, Steward's Account of Stores; Exhibit 3, the order for meat from the War Shipping Administration to the Ed Heuck Company; Exhibit 4, Memorandum showing percentage of meat cuts; Exhibit 5, Delivery tags signed by Brandt-Neilson; Exhibit 6, Memo by Hinman of load on truck; Exhibits 7-A, 7-B and 7-C, being wooden box meat, carton meat and sack meat; and Exhibit 9, the tags signed by defendant Rodriguez. I offer those as against all of the defendants.

Exception No. 12

Mr. Friedman: On behalf of each of the defendants, Chevillard and Patron, I object to their admission in evidence, Exhibit 2, which is the inventory, I understand was prepared by Mr. Rodriguez at the conclusion of the trip in December on the Sea Perch. I object on the ground that it is an act, transaction and event occurring out of the presence of either of these defendants and which is not binding upon them. There is no evidence they had any knowledge of any such inventory of its preparation or delivery.

I understood Exhibit 3, which is the order for the meat to the War Shipping Administration from the Ed Heuck Company, is included, and I offer the same objection on the same grounds. But so far as these defendants are concerned this is a matter of

total strangeness to them. They did not participate in it. It was not called to their attention, nor was it authorized or directed by them and it is not in any way binding on them. [156]

Likewise, Exhibit 4, the memorandum showing the percentage of meat cuts. That was the memorandum supposed to have been prepared by Barral and Mr. Hinman at the Palace Market sometime after the 16th day of January. We object to that on the grounds already specified in our objections to the other exhibits.

Likewise, we object to the introduction in evidence of Exhibit 5 against either of these defendants. I understand that is the delivery tag signed by Mr. Brandt-Neilson which Mr. Hinman testified he placed on the truck parked on Sansome Street.

The Court: Just state the objection.

Mr. Friedman: We object on the ground that these things are acts and transactions occurring out of the presence of the defendants and there is no evidence connecting them with it in any way, shape, manner or form; and they are not binding upon them. The same objection goes as to Exhibit 6, the list of meat given to Heuck and Exhibit 9, the tags signed by Rodriguez. We object to each one of these on all the grounds heretofore specified and on the additional ground it is not part of the *res gestae* on any action established against them here as against the defendants Patron, Chevillard, either or both of them.

The Court: I will admit all the exhibits against

all the defendants. Will this conclude the Government's case,

Mr. Hammack: I have others to offer, but this will conclude the Government's case.

The Court: After you have offered them?

Mr. Hammack: After I have offered them and exhibited them to the jury. I think some I will read to the jury as being the fastest method of proceeding, and others I will show to the jury as being the fastest method of proceeding. [157]

The Court: I will admit them in evidence subject to the motion to strike as regards the defendants Jacky and Vincenzini.

(Thereupon United States Exhibits 1, 2, 3, 4, 5, 6, 7-A, 7-B, 7-C and 9, formerly marked for identification, were admitted in evidence as to all defendants.)

Mr. Hammack: At this time, may it please your Honor, I offer in evidence as against the defendants Jacky and Vincenzini alone the exhibits being in evidence already against all other defendants.

Mr. Friedman: May I have the understanding, your Honor, that as to the defendants Chevillard and Patron, we have an exception to your Honor's ruling admitting each one of these exhibits in evidence?

The Court: Yes, you may have your exception.

Mr. Hammack: Exhibits 10, 10-A and 10-B, being the weights and recapitulation from the National Ice & Cold Storage Company, as testified to by Mr. Lord, previously in evidence against all

defendants except Jacky and Vincenzini, at this time I offer as exhibits against all defendants.

Mr. Friedman: They have been admitted against all the defendants?

Mr. Hammack: All the defendants except Jacky and Vincenzini.

The Court: I will admit them subject to motion to strike.

(Thereupon Exhibits 10, 10-A, and 10-B were admitted to evidence as against all defendants.)

The Government Rests

The jury having been excused, the defendants Chevillard and Patron severally made the following: [158]

MOTIONS TO STRIKE OUT EVIDENCE AND EXHIBITS

Mr. Friedman: Your Honor at the trial admitted certain testimony subject to a motion to strike, and first with the Court's permission I am going to move to strike a great part of this testimony.

Exception No. 13

The first motion that I make is to strike out Government's Exhibit No. 1. That is the contract between the War Shipping Administration and the United Fruit Company. I move to strike that out on the ground that it is an act occurring between the parties named in this contract, an act, an event that occurred long prior to any of the things alleged in this indictment, and which, of course, and which

occurred between parties who are not involved in this case, and clearly an act and transaction over which the defendant had no control and had no knowledge, and I move to strike that contract out from the evidence so far as my two defendants, Chevillard and Patron, are concerned.

Does your Honor wish to rule as I go along?

The Court: Is that motion submitted, then?

Mr. Friedman: I submit that motion.

The Court: I will deny that motion.

Mr. Friedman: We take an exception.

The Court: You may have an exception.

Exception No. 14

Mr. Friedman: The first witness that was called by the Government was Mr. Halstead. Mr. Halstead testified he was port steward. He testified as to the receipt from Mr. Rodriguez of an inventory, a requisition that was filed by Mr. Rodriguez as chief steward at the conclusion of the trip of the Sea Perch on December 28, 1944. [159]

I move to strike out the testimony of Mr. Halstead so far as it relates to the defendants I represent on the ground that, first, such testimony, including any inventory, is immaterial and incompetent as to any issue raised by this indictment, and certainly does not tend in any degree to establish the guilt of the defendants or any element of the charge against them.

Secondly, on the ground that those are acts, transactions and events occurring out of the presence of the defendants and prior to the time that

any evidence in this case would establish any concert of action or criminal activity on the part of any of these defendants, particularly the two that I represent, on any count of this indictment. And that evidence fails to establish that even if my two defendants should have, in the course of this proceeding, sometime between the 16th and 24th of January participated in any act on which they might be convicted under any portion of this indictment, there is certainly no evidence that they ever had any knowledge of the filing of any inventory or the making of any requisition by Rodriguez to the United Fruit Company. The only thing in this case about any orders or inventories which by any stretch of the imagination could be attributed to Patron or Chevillard is the testimony of the ordering that was done somewhere along about the 18th or 19th of January, with Mr. Hinman, of the Ed Heuck Company. There is nothing to show that this inventory, or anything connected with it, was ever brought to the attention of the defendants at any time during this transaction, or that they had anything to do with it. I move to strike out the testimony of Mr. Halstead on direct examination and cross-examination relating to that fact, and likewise Government's Exhibit 2, which is the inventory that was introduced under that testimony.

The Court: I will deny that motion. I will say to you, Mr. Friedman, so you will understand what I have in mind, that [160] I feel that testimony that is now in, that was subject to the motion

to strike, was properly admitted in evidence. However, I do not want to foreclose you from the right of making the motions. There may be some other motions you have in mind that you can make for the record.

Mr. Friedman: That is what I am going to do. I am satisfied your Honor would not admit them unless you thought they were admissible, nevertheless in recounting these matters again your Honor might see that you were mistaken in some instances, as I feel your Honor was.

The Court: The last motion I will deny and note an exception.

Exception No. 15

Mr. Friedman: I will turn now to the testimony of Mr. Barral for a moment, and I have certain motions to strike in that regard.

Your Honor recalls that the testimony of Mr. Barrall was to the effect that sometime before they came to port he had a conversation with Mr. Rodriguez in which Mr. Rodriguez said that he had a certain quantity of meat in the ship, and that he wanted to sell it to some meat company. We objected to that conversation on the usual and customary grounds as to such conversations, and I now move to strike it out upon these particular grounds.

First, that it is not binding on either of these defendants, and that it is an act, a transaction, a conversation occurring out of their presence, and

that they never authorized or ratified it so far as the evidence in this case is concerned.

Secondly, it does not tend to prove any charge or element of the charge set forth in this indictment, and therefore is incompetent and immaterial for this reason. The charge set forth in the indictment or the case of the government rests upon this proposition. The Government contends that the fact that Mr. [161] Rodriguez in some manner had succeeded in accumulating some fifteen thousand or twenty thousand pounds of meat, and that by means of making some sort of a false inventory this meat was there, but still nobody knew it was there, and that as a result thereof Barral conceived the idea of getting some meat company to divert in some manner an equal quantity of meat, and then by putting a less amount on board the corrected inventory would show the total amount that should be there. But the conversation that occurred between Barral and Rodriguez, while they were at sea, was not in support of such plan or scheme. Barral's testimony is that Rodriguez at that time, in making these statements, wanted to sell the meat to a meat company, and Barral's testimony as to the first detailed conversation with Mr. Hinman on January 13, or whenever it was, the 14th or 15th, the first conversation with Mr. Hinman, his testimony is clearly to the effect that at that time Rodriguez did ask Hinman if he would buy the meat that they had on the ship. That is certainly no part of any plan or scheme that the Government is relying upon in this case,

and these matters and things occurred out of the presence of the defendants, and even if we assume for the purpose of this argument that subsequently Chevillard and Patron did some act or acts which would make them a party to the conspiracy charge contained in the third count of the indictment, nevertheless there was nothing in that unlawful scheme, as claimed by the Government, to sell this meat to the meat company, as an element thereof, and they never had any knowledge of it, and therefore adopted it, and never became a part of the conspiracy charged in the indictment, and therefore we say that the conversation testified to by Barral, as between Barral and Rodriguez, while they were at sea, related to meat in the ship's stores; and the conversation had by Barral and Rodriguez with Hinman on the occasion of the only time that Hinman ever spoke to Rodriguez has no bearing in [162] this case so far as these defendants are concerned, and I move that each of these conversations be stricken from the record.

The Court: I will deny this motion, too, and you may have an exception.

Exception No. 16

Mr. Friedman: Likewise, I move to strike out the testimony given by the witness Hinman as a conversation and telephone call had by him with Barral on January 17, 1945, at the Tadich Grill. The witness testified as to Barral wanting a list of the supplies that had been ordered for the Sea Perch. I make the motion on all the grounds that

I made the other motions on, that it is an act, transaction, conversation which the defendants neither heard, or ratified or approved, out of their presence and not binding upon them, and not within the issues of any count of the indictment.

Likewise, I move to strike out the testimony of the witness Hinman as to a conversation had on January 19, 1945, between him and Barral, held at the Palace Hotel, relative to the choice cuts of meat, and the memorandum evidence of the choice cuts of meat prepared by Mr. Hinman and Mr. Barral, upon all of the grounds upon which I moved to strike out the other testimony; that includes Exhibit 4 introduced by the Government.

I likewise move to strike out the testimony of the witness Hinman, given as to January 20th, in which he testified that it was his suggestion to Barral to leave the truck on Sansome Street, and in which he showed Barral where the truck would be located. I move to strike that out on all of the grounds I moved to strike out the testimony relating to the 17th and 19th of January.

Likewise, the testimony of Hinman as to January 22, in which he told Barral that the bill would be on the seat of the [163] truck, and in which testimony also appeared a telephone conversation from Barral to Hinman, relating to arrangements being made for the receipt, and likewise the testimony as to January 23 given by Hinman, wherein he testified at 3:40 p. m. Barral came to his office and gave him a receipt for all of the meat on the truck, which visit of Barral was preceded by a

telephone call with respect to where the truck was, and where the delivery would be made. I move that each of those conversations in the testimony be stricken on the ground they are not binding on either of the defendants Patron or Chevillard, that they form no part of the plan or scheme set forth in the indictment, that they certainly do not become material in considering either Count 1 or Count 2, that they were not within the presence of the defendants and each of them, and they are not binding upon them.

The Court: The motion as to the striking of the testimony of Hinman will be denied and an exception noted.

Exception No. 17

Mr. Friedman: Now, on the same grounds that I moved to strike out the testimony of the witness Hinman I move to strike out the testimony of the witness Barral which was his version of the conversations and transactions that occurred between Barral and Hinman on January 17, 19, 22 and 23, and of course it is based on identically the same grounds that I moved to strike out the testimony of Mr. Hinman.

The Court: The Court will make the same ruling and an exception may be noted.

Exception No. 18

Mr. Friedman: Now, referring to the testimony of Brandt-Neilson, I move to strike out the portion of Brandt-Neilson's testimony in which he testified

that on or about January 22, in the room of Mr. Rodriguez on board the *Sea Perch* he had a [164] conversation with Mr. Rodriguez in which Mr. Rodriguez discussed with him the question of economy and waste on ships, and that if stewards did not indulge in so much waste there would be a great deal of saving to the company in meat, and in which conversation he further stated that Mr. Rodriguez stated that he had a large amount of meat and had gone around to see the manager of a meat company, and that the meat company had ought to pay him, or that he could sell the manager of the meat company, and then your Honor will recall Mr. Brandt-Neilson testified there was some mention of a hundred dollars, but that he could not make out what it was all about; he did not know whether he was to get it or somebody else, or who was either to pay it or receive it. I move to strike out the testimony on the ground it certainly has nothing to do with the defendants in this case and does not tend to establish any essential element of any count of this indictment, and it is certainly not binding on either of these defendants; that was a conversation occurring out of their presence, and there was no evidence that they had any knowledge thereof, that they ever authorized or sanctioned the making of such statements by Mr. Rodriguez, or that they were subsequently apprised thereof, or it was ratified or confirmed by them in any way.

The Court: The same ruling and the same exception.

Exception No. 19

Mr. Friedman: I move to strike out the testimony of Mr. Hamburg, who testified, as I recall it, that he was the chief checker, and that he was present and talked to Mr. Rodriguez, in which conversation Mr. Rodriguez signed a sheet showing that a certain amount of meat had been delivered to the Sea Perch. You will recall on January 23rd he testified, Mr. Hamburg did, that he prepared that tag for signature, and that he requested Mr. Rodriguez to sign it, and that Rodriguez signed it upon his [165] statement that there was that amount of meat that had been delivered. Certainly that is not an act in furtherance of the conspiracy, and it certainly is not an act that is involved in Count 1 or Count 2 of the indictment, because under this witness' own testimony, Mr. Hamburg's own testimony, Rodriguez signed upon his representation this tag for the United Fruit Company, and he, as the Government contends, is the agent and the alter ego of the War Shipping Administration, and procured the signing of this tag by Mr. Rodriguez. It is certainly not a false statement as outlined by Count 1 of the indictment, and it is certainly not a trick or scheme to cover up that fact. I can conceive that if this tag had been given to the Chief Clerk and prepared by Rodriguez and signed by him and given to the Chief Clerk, that there probably would be some basis for the assumption that Rodriguez knew it was false and was filing it for the purpose of concealing facts from the War Shipping Administration, but such is not

the evidence in the case. This is the Government's own evidence, that is not ours, and the Government's own proof has established that the tag was not prepared by Rodriguez upon the representation of an agent of the War Shipping Administration that that amount of meat had been placed on the ship, and that it was a routine matter, that these things were done in that way at all times. So I move to strike out the testimony and the tag (Exhibit 9) signed by Rodriguez on the ground that it does not prove or tend to prove the elements of the offense set forth in Count 1 of the indictment; that it does not prove or tend to prove the elements of the offense as set forth in Count 2, and does not prove or tend to prove the offense set forth in the third count of the indictment; and upon the further ground that it was a transaction outside of the presence of these defendants, which they had no knowledge of prior to or subsequent to the time of its commission, and they never [166] authorized, ratified or confirmed or had any knowledge thereof.

I will submit that motion.

The Court: The motion will be denied and an exception noted.

Exception No. 20

Mr. Friedman: I move to strike out the testimony of the witness Sterks, in which he gave an opinion and conclusion that on a certain day he looked through the stores in the storage boxes of the Sea Perch, and as a result thereof said as a

conclusion that there were some 35,000 or 40,000 pounds, in one instance, and in another instance said there were between forty-five and fifty thousand pounds of meat, on the Sea Perch; that was plainly the opinion and conclusion of the witness, and it is certainly not binding on either of the defendants Chevillard or Patron, and I do not think it should be allowed to stay in the record.

The Court: I think the objection to that testimony goes to its weight rather than to its admissibility, so I will deny the motion and note an exception.

Exception No. 21

For the record, I move to strike out the statement alleged to have been taken by the FBI from Mr. Chevillard on the early morning of January 24 of this year, and I move to strike out that statement on several grounds.

First, I move to strike it out on the ground that the manner in which the statement was procured was denial of due process of law and violation of the Fifth Amendment of the Constitution of the United States. Your Honor will recall that there is a series of decisions rendered in the last couple of years which deal with the taking of statements, admissions, and confessions from a defendant, and without enumerating them in detail your Honor knows that they condemn the use of anything that approaches [167] coercion, that amounts to duress in its procurement. You heard the testimony of the FBI agent, who testified as to the manner in which this statement was procured, that it is not

the language of Mr. Chevillard, that there were discussions as to what should go into it, that they had to talk to him as to the kind of words that would be used, and so forth and so on. I am not going to take any further time to recapitulate that testimony, but I move that that statement be stricken from the record, in so far as the defendant Chevillard is concerned, on the grounds I have stated, and on the further ground that it is a statement containing a mere narrative of past events and is not corroboration of any other portion of the record as to any of the matters or things set forth therein, and calling your Honor's attention to a case in 312 U. S., just recently, it being a statement of that character, it must be corroborated before it can be admitted.

The Court: I will deny the motion and you may have an exception.

Mr. Friedman: I think I have covered all of the material parts with the exception, and I probably can state it briefly, of the exhibits that were admitted and I assume they were admitted like all other things subject to our motion to strike, and if I do not make my motion to strike I waive my objection. I will make them very briefly without argument.

Exception No. 22

I move to strike out Government's Exhibit No. 4, which is a memorandum showing the percentage of cuts which I believe I have already mentioned that are involved in the conversation between Barral

and Hinman in the Palace Hotel, on all of the grounds I urged against its admission.

Exception No. 23

I move to strike out Government's Exhibit 5, which was a delivery tag, on the ground that it is not binding on the [168] defendants, and that they had no knowledge thereof, and never authorized or procured the signing of any such tag by the representative of the War Shipping Administration, or United Fruit Company, and that they never ratified or confirmed that fact.

Exception No. 24

I move to strike out Exhibit No. 6, which was a list of meats given to the Ed Heuck Company showing the items to go on the truck. Your Honor will recall that that was testified to, as I recall, by Mr. Hinman, that he prepared a list of the meat, not with any of these defendants, but an independent transaction of his own to give to Mr. Heuck. That does not prove what meat went on the truck, that only proves something he told Mr. Heuck to do, and I feel it has no place in this case, and it certainly falls into the rule of *res inter alia acta*, and it is not binding on either of the defendants, what Mr. Hinman did of his own volition.

Exception No. 25

I have already moved to strike out the tag signed by Rodriguez, which is Exhibit No. 9, and I again make the motion in the order of continuity.

Exception No. 26

Now, as to Exhibit No. 13, which was a note left by Kinelle on the night of the 23rd of January, I believe at the Normandie Restaurant, which was an order for so many pounds at 35—15,000 pounds, or whatever that was at 35—I move on behalf of the defendant Patron to strike that out on the ground that it is not an act, transaction, or event binding upon him. There is not one word of evidence in the case that Mr. Patron at any time was attempting to sell any meat to anybody, and therefore the transaction between Chevillard and Kinelle is not binding on the defendant Patron, he is not responsible for that, [169] and therefore could not be used against him.

Exception No. 27

I do not know whether your Honor admitted Exhibit 17 against all parties in this case, but if so I move to strike that Exhibit No. 17.

The Court: No, that was admitted only as to the defendant Rodriguez.

Mr. Friedman: I think that is all of the motions to strike.

The Court: Those motions will be severally denied and exceptions noted.

Exception No. 28

Thereupon Mr. Friedman, on behalf of the defendant George Patron and on behalf of the defendant Fernand Chevillard, moved the court to direct the jury to return the following verdicts, to wit: a verdict finding the defendant Patron not guilty on

count one of the indictment, a verdict finding the defendant not guilty on count 2 of the indictment, a verdict finding the defendant Patron not guilty on count three of the indictment, a verdict finding defendant Chevillard not guilty on count one of the indictment, a verdict finding the defendant Chevillard not guilty on count two of the indictment, a verdict finding the defendant Chevillard not guilty on count three of the indictment. Each of said motions was made upon the ground that the evidence introduced by the Government was and is insufficient to support either a verdict or a judgment of guilty as to each defendant, and that no offense sought to be charged in each count of the indictment had been proved by the Government as against the defendant Patron or as against the defendant Chevillard. The court denied each of said motions for directed verdicts to which ruling of the court each of said defendants duly excepted.

United States' Exhibits No. 5 and No. 9 are in the words and figures following, to-wit:

Ed Heuck Company
Butchers
Sausage Manufacturers
522-530 Clay Street
San Francisco 11, Calif.
Phone SUTter 1237, All Departments

Jan. 23, 1945

Sold to United Fruit Co

Address SS Sea Perch

Asst. Beef WSA A Army

4352	Ground Beef	82
8804	Boneless Rounds	177
2572	Strip Loin bone in	58
3347	Boneless Sirloin Butt	64
1153	F. T. Tenderloin	24
4046	Oven Prep. Ribs	87
10452	Boneless Prepared Chuck	196
2727	Boneless Plates	53
.....	D. S. Bellies	
.....	Beef Liver	
606	Head Cheese	5
501	Liver Sausage* Heucks	5
1247	Bologne Ty I	14
3031	Pork Shldr. A Army	29
2329	Semi Boneless Pork Loin	46
3506	Pork Link Sausage Ty II	35
.....	Spareribs	
1045	Fab. Veal AA Army	9
7034	Fab. Lamb AA Army	75

4002	Cr. Beef Brisket A Army	29
4045	Cr. Beef Plate A Army	30

No claims allowed unless reported immediately

Office Copy Army
 [In margin]: Brandt Nielsen

U. S. EXHIBIT NO. 9

Ed Heuck Company

Butchers

Sausage Manufacturers

522-530 Clay Street

San Francisco 11, Calif.

Phone SUTter 1237 All Departments

Sold to United Fruit Company Jan 23 1945

Address SS Sea Perch

Asst. Beef WSA Army

4352	Ground Beef	82
8804	Boneless Rounds	177
2572	Strip Loin bone in	58
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2727	Boneless Plates	53
.....	D. S. Bellies	
.....	Beef Liver	
606	Head Chese	5
501	Liver Sausage* Heucks	5
1247	Bologne Ty I	14

3131	Pork Shldr. A Army	29
2329	Semi Boneless Pork Loin	46
3506	Pork Link Sausage Ty II	35
.....	Spareribs	
1045	Fab. Veal AA Army	9
7034	Fab. Lamb AA Army	75
4002	Cr. Beef Brisket A Army	29
4045	Cr. Beef Plate A Army	30

No claims allowed unless reported immediately

Office Copy Army Berth 2 Outer Harbor

(Superimposed upon the foregoing by means of a rubber stamp, the names of Hamburg and Rodriguez being written thereon in long hand was the following:)

I certify that the services above specified have been performed or that the articles in quantity and quality above specified have been delivered to the vessel in good condition.

Checker H. Hamburg

Master

Chf. Officer

Chf. Engineer

Chf. Steward J. Rodriguez

Chf. Purser

Radio Opr. [172]

(Attorneys for the defendant Vincenzini and the defendant Jacky, having made motions for directed verdicts of not guilty, said motions were granted by the Court and the further

attendance of said defendants at the trial was excused and their bail exonerated. Thereafter the trial proceeded solely against the defendants Chevillard, Patron and Rodriguez.)

Testimony of George Halstead for the Defendant
Rodriguez

GEORGE HALSTEAD

produced as a witness on behalf of the defendant Rodriguez, having been previously sworn, testified in substance as follows:

Direct Examination

(By Mr. Resner)

The papers I hand you are those you requested during the noon recess. This is the recapitulation sheet for three voyages. It is an analysis of subsistence costs for each voyage of the Sea Perch. The Sea Perch, since she was commissioned, has made three voyages and is now on her fourth. That sheet shows the cost per mile and cost per pound of food consumed. As to voyage three it shows the cost for three meals per day per man to be 63½ cents; with respect to voyage two it shows costs per meal or day as 84 cents; as to voyage one it shows costs per meal day as 98.3 per day. These sheets do not show the meat stores on hand at the end of each voyage. They show only the consumption which would vary according to the amount of men fed on the ship. On voyage No. 1, the total

number of meals served was 54,030 $\frac{2}{3}$ days, which must be multiplied by three to get the exact number of meals. We serve three meals a day and in our bookkeeping we term it "meal days." For voyage 2 it shows total number of meal days as 112,939- $\frac{2}{3}$ days. For voyage 3, a voyage from San Francisco, on the tenth month, thirtieth day, 1944, [173] arriving back in San Francisco on the 28th day of the 12th month, 1944, the total number of meal days was 108,481. On other sheets there is a showing of the consumption of food according to poundage. On voyage one the amount of meat consumed per person per day—which included fresh, canned, sorted and smoked, was .845 pounds per day. Voyage No. 2 was .951 pounds per day. Voyage No. 3 was .638 pounds per day. There is also a breakdown of bread and cereals, groceries, fruits, vegetables, fish and dairy products. All these matters are on these sheets. The consumption of poultry on voyage three per man per day was .123 pounds. On voyage two it was .105 pounds and on voyage three it was .094 pounds.

The sheets testified from by the witness were marked in evidence defendant Rodriguez's Exhibit D. When I went on board the ship and checked the ship for the orderliness of the stores and the cleanliness, I did not check for anything else. I didn't check the inventories. It is part of my duties to check inventories at different times, not every voyage of a ship coming in. There are times we make a spot check of different ship at different times. If we think anything is wrong we will take

a spot inventory if we have time to do so and that is done on different ships. I had no occasion to take a spot inventory on this ship of Rodriguez. When I went on board the Sea Perch I inspected the whole ship for orderliness and cleanliness. I go aboard to see if there are any questions, any crew trouble and for various things in my capacity and I can't recall exactly. I did receive a letter from Rodriguez with respect to some meats that were going aboard the ship with regard to the quality of the food. The list you show me is the one I refer to and was received in my office before the ship arrived.

(Letter admitted in evidence as defendant Rodriguez Exhibit E.) [174]

I have known Mr. Rodriguez since about 1930 and he has been connected with the United Fruit Company since that date. I have been connected with the same company during that same period of time.

Cross Examination

By Mr. Friedman:

The Army cooks prepare the food on the ship. These cooks are supplied by the Army and not by the United Fruit Company. Referring to the three sheets that are now Defendant Rodriguez' Exhibit E the figure .638 per day refers to the pounds of meat served per man per meal. It is arrived at by considering every meal day of the voyage and every meal served in that voyage. It does not necessarily mean that at any meal in which meat was served

there was only .638 pounds of meat served to each person. That is the average for the entire voyage. This average is arrived at by including all meals whether or not meat was served at those meals or not. This does not tell exactly how much meat was served at each meal. It tells how much meat was served for a thousand meal days. That is true of all these other things. The poultry is arrived at by using the same basis of computation and includes meals in which poultry was served and meals in which poultry was not served. Mr. Rodriguez ordered the food for the ship. He does not actually place the order with any company. The United Fruit Company picks out the supplier of that food. We place it with a firm that has been authorized by the War Shipping Administration for us to do business with. Neither myself nor the chief steward have anything to do with the quality of the meat placed on the ship. That is the Government's worry.

Testimony of Julio Rodriguez on His Own Behalf

JULIO RODRIGUEZ,

one of the defendants, called as a witness in his own behalf, being first duly sworn, testified in substance as follows:

Direct Examination

By Mr. Resner:

I was born in Porto Rico, February 1, 1901. I am forty-four years old and a citizen of the United States. I have been a seaman about twenty-seven

years, twenty-four years steadily. My last rating on board ship was chief steward and I have been such since 1941. Prior to that I sailed as second steward and I have sailed in the Steward's Department. My wife is dead. I have two children. One was killed last September in France. My daughter is married and lives in South America. I have been on the Sea Perch since she was commissioned. I have been with the United Fruit Company since 1929. I first met Pierre Barral in New York in January, 1944. Barral was standing by to go on the Sea Perch as supervising chef and was introduced to me by the port steward in New York City. Barral made the first voyage with the Sea Perch. I did not employ him nor assign him to the ship nor ask that he be assigned to the ship. He was with the vessel on the second voyage as supervising chef and on the third voyage he was second steward and storekeeper. I do not speak French. I speak Spanish, Italian and English. On these voyages Barral always bragged how much money he made on a tanker when he was chief steward. He told me how much money he made selling meat and grocery stores, all those things. Some time in December, before the vessel came back to San Francisco, on the 25th I instructed Barral to take inventories. The ship was at sea. It takes a little time for taking inventory and figuring out and typing it, and to make the requisitions. Barral gave me the inventory on December 26 about noon. It was made up on the [176] company form, the same as Government's Exhibit 2. After I received the in-

ventory prepared by Barral I did not report that inventory to the company. I posted from that inventory on my paper. From Barral's figures I figured out consumption and what we would have on hand on my ships. My average was 23.5 per meal, and it was based upon the figures Barral had brought me. I was in doubt of that average. It was Barral's job as storekeeper to keep track of the supplies of the ship. After he gave me the inventory I was not satisfied. I went down below to see the ice boxes and when I opened them I knew I had more meat in the ice boxes than on the inventory he gave me. I took another inventory. It was different from Barral's inventory in that I found about \$15,000 more. There was more money on my inventory than his inventory. My inventory showed more supplies than his. It showed more supplies of meat than his inventory did. On this inventory it showed \$15,000 of meat representing about eight or nine thousand pounds. Neither at that time nor at any time on the ship did I tell Barral that, "We had ten or twenty thousand pounds pounds of meat over that and nobody knew about it, and there was a chance for us to make some money." I never told him anything of that character.

I prepared the inventory which is Government's Exhibit 2. I typed up the figures on that sheet of paper from my pencil copy which is on board the ship. I believe I gave the pencil copy to Agent Johnson of the FBI. I gave Barral's inventory back to him. I did not tell him his inventory was

wrong nor report it to the company. I just gave my inventory about the stores I had to the company. I prepared six papers, one remained on the ship. The other five I gave to the port steward. That shows the amount of supplies with regard to meat that was on hand at the time I came into port, my inventory truthfully represents the meat that was on hand when the ship came back. I did not conceal nor divert nor [177] cover up anything. I did not have any meat on the ship which isn't reported on this inventory. Everything is there.

The ship arrived in San Francisco on December 28. I left the ship December 30. I gave the inventory to Mr. Halstead on our day of arrival. He came aboard the ship. I made the rounds of the storeroom with him. I returned to San Francisco on January 13. Before I left San Francisco I did not have any discussions with Barral about anything having to do with diverting meat from the ship or selling it or anything of that character. Barral didn't report on the ship on the 29th and 30th. From the time the ship docked until I left for New York I had no talk with Barral except to tell him to take care of my department while I am away. When I came back I did not have any discussions with Barral about anything having to do with diverting meat or stealing meat or anything of that character. On January 16 I went to lunch about 2:30. Barral took me to a place to eat some fish. I don't know San Francisco and I don't know the place or the street. I do not know if he took me to the Heuck Company. He took me to a butcher

shop or meat company. Barral went up to see this man and he said, "I have 10,000 to 15,000 pounds of meat I want to sell." This man said to him, "Well, I don't know how I can buy this meat. Barral told him he could sell the meat some place and the man said he didn't know about that, that he supplied the ships. Barral said he knew that he was going to supply his ship and said, "Can you make it so many thousand pounds you deduct from the meat you send, to send 15,000 pounds?" The man said he didn't know how he was going to get away with that and said he would let him know. I started to go. I did not participate in this conversation which lasted about five or six minutes. That morning I had not phoned to anybody to make an appointment to see anybody in the Heuck Company. I did not talk to Hinman. When we got on the street I was very indignant and [178] I said to Barral, "What is the meaning of taking me to a place like this and talking of crookedness?" Barral said, "Well, I want to surprise you to make some money so you can have some money." I told Barral that I didn't need any money, that I make enough money, and I said, "Next time you mention a thing like that I will report it to the police," and I left and reported to the ship. Nothing else was said at that time. After that I never saw or talked to anybody from the meat company or anybody else. I never had any dealings with this meat company before in connection with ordering any meat for the ship. I never saw that man again until I see the man testify against me and I don't know if it is the same man or not. When I was

in jail, two men were there. Three or four days after I was arrested Mr. McGee said that Barral had said that I went to see the meat company to make a deal with them. I told Mr. McGee, "I haven't done any such thing." Mr. McGee showed me a picture and said, "Is this your picture?" The picture you show me is the one Mr. McGee had. I told McGee the picture was taken five days before this happened in San Francisco. Mr. McGee took that picture from me. About an hour later two men came over and Mr. McGee called me out. McGee asked one of the men if he knows me and he said, "I believe yes, but he had a coat on." The other man didn't know me at all. I told McGee I never saw this man before, I never saw his face at all. He said nothing else at that time.

In the period from January 15 to 24, I went to the Normandy Restaurant very often, almost every night. I ate there. I was a regular customer there. I had been there on earlier voyages. I had dinner at the Normandy the night before I went to New York. I know Mr. Chevillard and Mr. Patron. I was introduced to him by Barral about six months ago. I never had any talk with Chevillard or Patron about getting meat off the ship. [179] They never approached me on the question of getting meat off my ship. I never told them I could pick up meat for them. The nature of my relationship with them was just a patron in their restaurant.

Mr. Brandt-Neilsen came aboard the ship on January 23, about 7:30 in the morning. He came to my room. All the checkers generally come to my

room and leave their clothes there. Brandt-Neilsen and I talked about the ship, about chief stewards on ships nowadays and that they don't know much about the ship, that they waste enormous supplies about the ship and I told him if every ship steward aboard the ships would take care of the ship there would not be any scarcity of supplies in the United States. Of course, every transport ship they waste about 50 per cent of the food by throwing it aside by not knowing how to prepare it or not knowing how to take care of the food. Then I said to him, "Did you get anything from the meat company?" I was joking with him, and he said, "What do you mean?" I said there are many tips going around here and I said the quality of the meat they send aboard the ships now is so bad, I said, as a matter of fact I had 10,000 pounds of corned beef which was impossible to eat and I transferred about 5,000 pounds of it in New Guinea to another ship. I asked him if he passed on the quality of the food and he said he had nothing to do with inspecting the supplies. I mentioned to him that in past times we used to inspect all of the food ourselves, and he said "Yes, but nowadays we don't do that, we don't inspect it."

With regard to the amount of food that is served a hundred men, I had regulations to follow in that regard, which are issued by the United Fruit Company. According to those regulations there is supposed to be issued to the troops per hundred men from forty-five pounds of meat to a hundred pounds

of meat per hundred men, all depending on the kind of meat you serve. [180]

I did not give Government's Exhibit No. 5, the bill from the Heuck Company to the United Fruit Company, to Brandt-Neilsen to sign. I did not tell Barral to give it to him to sign. That is my signature in the upper right hand corner of Government's Exhibit 9. It is dated January 23. I remember signing that. It is a matter of routine every trip. When they receive all the supplies aboard the ship the head checker comes into my room and places it on my desk to be signed. Mr. Hamburg brought this aboard, together with other papers. There were about 250 bills, separate pieces of paper there, and I signed my name to all of them. Each bill has five copies and I had to sign all of them. I didn't read them before I signed them. You can't read them because you don't know whether it was received or not. When the food is delivered to the ship by truck I did not check it on to the ship. I have nothing to do with checking it on to the ship. When I signed this receipt for delivery of meat, Government's Exhibit 9, I did not know if the meat was aboard the ship or not and that is true with respect to all of the other supplies. Mr. Hamburg is the head checker. When he brings these papers down to me to sign he requires me to sign it. That is just a matter of routine. You never know until you come back from the trip if there is anything missing. During the trip you will find out.

I never gave Barral any instructions nor told him that he should have any dealings with Heuck

or Hinman of the meat company or that he should divert the meat or that he should go to anybody about it. I did not know anything about what was going on.

On January 22 Barral came on the ship about 10:30 to eleven o'clock. He was supposed to be on the ship at eight o'clock in the morning. I told him on Sunday morning to be on board the ship as the ship was to be stored at ten o'clock [181] in the morning and he came in about eleven. The 22nd of January was not Barral's day off. On January 23 Barral got on the ship about 11:30 or twelve. He was due at six o'clock in the morning. The day before I told him to be on the ship at six o'clock because that is the first day we are going to feed the ship's crew and officers. I was on the ship at six, Barral was not there. He showed up from 11:30 to 12. I left the ship at 7:30 in the evening and they were still loading. While the ship was at the Army Base, at Oakland, I lived on the ship. I had no room ashore. Between January 15 and January 23, Barral had two rooms ashore. He told me he had a room at the Hotel de France and he had another room in a hotel somewhere else. Barral was entitled to be off the ship from January 13 from noon until January 22, eight o'clock in the morning. He was gone during all of that period. After January 20 he was not entitled to be off the ship. From January 13 to the 20th I only saw Barral once around the ship. During that period I believe I saw him one night in the Normandie.

On the night of January 23 I was in the Nor-

mandie Restaurant and left there about eleven o'clock.

I never saw the plant down in Millbrae. I was never there. I do not know Mr. Jacky. I do not know Mr. Vincenzini. The first time I saw them was in jail.

On January 23, Barral did not tell me that there was a meat truck on Sansome Street. He did not tell me that he had to go to San Francisco and get the truck or to make arrangements to have the truck driven to Millbrae. I did not tell Barral to go to San Francisco, to take the delivery tag over to the Heuck Company. I did not excuse him from the vessel to go any place to do anything in connection with any meat or anything else. I did not have any conversation at all with Barral along the line [182] of going to San Francisco to get a meat truck or take a delivery ticket or anything of that character. All of the afternoon of the 23rd I was about the ship.

(Thereupon an adjournment was taken until March 14, 1945, at ten a. m., whereupon the following proceedings were had:)

Direct Examination of Julio Rodriguez Resumed

With respect to the uniform I wear and the rating I have, I am a lieutenant in the Maritime Service.

Cross Examination

By Mr. Hammack:

I am a lieutenant, senior grade, in the United States Maritime Service. That picture reflects me

wearing the uniform of a lieutenant commander in the United States Maritime Service. My testimony is correct that Barral's inventory was about \$15,000 less than my inventory and this \$15,000 represented about eight or nine thousand pounds in meat. Meat is about 35 or 40 cents a pound. I didn't say the \$15,000 was in meat alone. I found more groceries, dairy products, and fish than was all included in the inventory. There was eight or nine thousand pounds of meat, but the \$15,000 included all the supplies on the ship. If I testified differently yesterday it must be a mistake. I went to a butcher shop with Barral. It looked like a butcher shop and something like that. It was about 2:30 in the afternoon. I do not know whether on the voyage before I had received meat from the Heuck Meat Company. I don't keep the record of the delivery tags and invoices for supplies, including meat. I just have bills from different meat companies for supplying the ship which we post in our inventory. I don't go through the bills and see who supplies the ship, it isn't my business to know that. [183] I post the bills on the books. On the bills is specified the amount of pounds and the costs. I am just interested in my forms to post those bills and poundage on my form so I will know the amount of meat I have. I will explain how I know where a particular shortage occurred. If we had received 10,000 pounds of corned beef or 10,000 pounds of expensive roast and I have on the bill of fare expensive roast twice and on the third time I put on the bill of fare, by that time, pot roast, the

storekeeper tells me there is no more beef left and then I go through the bill of fares and see how many times I serve the particular item, then I know how many pounds I consumed. If there is no more left, I know there is so many pounds missing and I make a notation on my check. At the end of the trip on my voyage letter I explain to the port steward such item was not aboard the ship. The port steward knows which company the meat is supplied from because meat is supplied from different companies. I have these bills, a copy of this delivery tag, on board ship. While I copy or make a record of all the items on her pertaining to beef I never did see the name of Ed Heuck Company Butchers. When I went to the butcher shop with Barral that place was a shanty, and when he took me in he says, "We are going to see a friend." He seemed to know where he was going. I didn't look at the windows and the fact that it was the Ed Heuck Meat Company and had the name on the doors and windows meant absolutely nothing to me at all. When I went to the butcher shop with Barral he told me we were to see a friend of his. He did not say why. When we arrived at the meat company, Barral told the man he had a proposition to make. It was in an inside room that looked like an office. Barral said to this man that he had from ten to fifteen thousand pounds of meat he wanted to sell and this man said to him that he didn't know if he could buy the [184] meat or not. He said he supplied ships and Barral said, "Well, if you supply ships and you say you can make a transaction, in-

stead of sending on board ship the full amount you can send aboard the ship ten or fifteen thousand pounds less." When he said that I just left there. I knew something was going bad. When I got outside Barral was after me. I told him to get away from me and the next time he mentioned to me that I will report it to the police. When I got outside I didn't fire Barral, I told him to get away from me. When we were in the place talking to the man in the meat company I didn't say nothing, not a thing.

On January 16 I found Barral when I came out from Pier 39 on the Waterfront in San Francisco. Barral was waiting for me. I told him I wanted to have some lunch. He took me some place nearby to a fish place. Following this conversation at the meat company I did not report that conversation to Mr. Halstead. I know that Mr. Brandt-Neilsen was a checker of supplies on the ship. I don't know that Mr. Brandt-Neilsen merely checks the items and that he doesn't check for the quality of anything that comes aboard that ship. I don't have anything to do with checking the supplies on board the ship. I did not know an Army man was down there, checking meat for the quality. I see Army men on the deck but I don't know what they are doing. I do not recall if the soldier who testified here was on the dock or not. Brandt-Neilsen never told me he was a meat inspector. I believe he is a checker. I did not think he was a chief steward on January 23. I never saw him inspect the quality of the food because I have never been with him to

see if he inspected the quality of the food. When I told Brandt-Neilsen that he should be making a lot of money I was only joking with him and teasing him by saying that checking food properly nowadays, by not checking properly. He said, [185] "What do you mean?" and I said, "The quality on board the ship is bad these days." And I referred him to 10,000 pounds of corned beef we had on board, which was very inferior quality. I was only teasing the old man. I know he put my orders for meat through the United Fruit Company and who supplies the ship I do not know. The only time I examined the meat contained in boxes on board ship is when the storekeeper can't do it or asks me. On the Sea Perch trip in September the meat received all came in the same type of box, as Government's Exhibits 7A, B and C. I never noticed on the prior trips the marks, "U.S.A." or "United States Army" stamped on there. I have been a chief steward since 1941. I know Mr. Hamburg. He is the head checker. Mr. Hamburg doesn't check for everything and the only time I see him is when he comes in to have the bills signed up. When he comes in to have the bills signed, I did not say to him, "Well, you must be making a lot of money too." I don't tease this fellow because I am not acquainted with him much.

(Defendant Rodriguez rests.)

Testimony of George Patron, One of the Defendants.

GEORGE PATRON,

one of the defendants testifying in his own behalf, being first duly sworn, testified in substance as follows:

Direct Examination

By Mr. Friedman:

I reside at 1326 Powell Street, San Francisco. I am forty-two years old. I am a part owner of the business known as the Normandie Restaurant, located at the address I just gave. Fernand Chevillard is my partner in that business. I am married and have a boy nine years old. I have been identified [186] with the Normandie Restaurant about sixteen months. The character of the premises at the Normandie Restaurant is we have a restaurant and a bar and a kind of family trade coming there. A family trade mostly. There is a little dance floor there. After eight o'clock there is a little dance floor. With reference to the family trade, that is people do not just come and eat their dinner and leave. They come to eat and stay for a little fun after their meals. I know Pierre Barral. I just met him in San Francisco about twenty-two months ago. I met him when I took a trip at sea on the Monterey, on which I was leading cook. Mr. Barral was the chef. I made three trips and the last trip was three months and was the trip on which I met Barral. On the trip we did not necessarily become close friends. Being a Frenchman I talked

to him more than I would have to somebody else. A month or two months after my last trip on the Monterey I became identified with the Normandie Restaurant. After that I lost sight of Barral for about fourteen months. I left him in New York where I quit the Monterey and came back to San Francisco. About five or six months ago I popped up in San Francisco again where I saw him in the Normandie Restaurant. The conversation I had with him at that time I just said, "Hello" and something. He told me he expected to have some meat from a meat company and if I was interested. I kind of laughed at it and said, "Well, you better see my partner because I don't care of the food handling." He then went to my partner but I don't know what they talked about. Barral first mentioned meat to me four or five months ago, the first time he came in. After that first conversation Barral came in and out of the Normandie. One time he told me, "What is the matter with your partner that he doesn't buy that meat?" I say, "What am I going to do; maybe he don't need the [187] meat." He was kind of sore about it, but I say I can't do anything about it if he doesn't want it. Those are the only two conversations I had with Barral about meat up to this year. I saw Mr. Rodriguez in the Normandie quite often before I was arrested. He came in the bar and had supper and stuff like that. Mr. Rodriguez never discussed with me any conversation about his having any meat or me or my partner buying any meat or the fact that he had any meat to sell. Barral never discussed with me

the question of his having any meat or the fact that he was going to get any meat in the presence of Mr. Rodriguez. I saw Barral in the Normandie after Christmas when he came back from sea. It was two or three weeks from January 23. He said, "I got some meat and I make arrangements with the manager of the meat company. I hope to get that meat and I hope you fellows can buy it." I told him I didn't know and to see my partner again. I told him I don't take care of the food handling. My duties in the Normandie were to take care of the bar and my partner took care of the food and dining room. When Barral mentioned to me this fact that he expected to have or was going to have some meat and asked me whether or not we were interested, I again referred him to my partner. The next conversation with Barral about meat was a few days before the 23rd. He got mad and said, "What is the matter?" and I referred him to my partner. I said, "After all, it looks pretty fishy, that meat of yours, and I don't blame my partner if he doesn't want to go along with you." That was maybe two or three days before the 23rd. The next time I talked to Barral about meat was on the 23rd at the Normandie Restaurant, about a quarter to four or four in the afternoon. He was alone, and just he and I had the conversation. He said he had a truckload of meat and he has to move it and I said, "What do you mean, a truckload of meat? Where [188] did you get it?" He said, "I fix it up with a manager of a meat company." My partner was away then and I said to Barral, "Why don't

you wait for my partner and do whatever you want to?" Barral said he intended to get a cold storage to store it in and I said, "I got no time to go on stuff like that, to wait until my partner comes." He says, "I got to get a driver." I say, "I don't have no driver here. I don't drive trucks." So Barral went away. I thought he was gone for good. Ten or fifteen minutes later he came back with a truck driver, his first name was Lucien. Since this trial started I have learned that his last name was De Angury. This man was pretty drunk. Barral said, "Let's go. You have got to show me that place there, to that frigid air place, wherever it is." I told Barral that I wasn't able to go there because I don't know the place over there by name or otherwise. I told him I don't know where the place was. Barral then took a map from his pocket and says, "That is the place." It was a little map, Millbrae, and I know where Millbrae is. I said that I didn't want to go but still I feel like a heel. He says, "You are a fine fellow. Just take me over there. You can find the place." He didn't know the place himself and neither did I but he had the map. Then I took them to Clay and Sansome, I think, where I saw a truck there, a yellow truck. They got out of my car and went in the truck. I was parked in the next block. I told them to go to Millbrae, to go by Third Street, taking the Bay-shore and after a while they will see Millbrae on the right and to turn right. Lucien was so drunk I was afraid something might happen but Lucien knew the countryside better than Barral. Then I went

myself on Third Street and had a glass of beer. They were going slow and I had a lot of time. Then I went on Third Street and I came back to see if they were coming up there. On Third Street they were stuck with their [189] battery. Naturally I come to the truck and say, "What is the matter?" They say there is some trouble with the battery, which is true I think, so I took Barral to a gas station about three or four blocks away. I saw the man in the gas station and brought him back to the truck with the battery. And I take him back to the station with the dead battery and when I see it is going to be all right I left. From the gas station I went to see if I could find that frigidaire. It was already six o'clock or more than that. I have never been to this so-called frigidaire place. I did not know Mr. Jacky. I do not know Mr. Vincenzini. After the battery was fixed I went to Millbrae and turned to the right and go to the old highway and I went to the gas station and asked where was the Millbrae Dairy. The man told me it was a quarter of a mile on the left side of the road. I finally got to the Millbrae Dairy where I saw Mr. Jacky. I didn't know him, but I met him there and said: "I am from the Normandie Restaurant," and gave him my card. That card was of the Normandie Restaurant and I don't know if it had my name on it or that of my partner. I had never seen Mr. Jacky before and when I did meet him I promptly introduced myself and gave him my card. Mr. Jacky recognized me and said, "I think there is a man you know that is on the phone." Mr. Chevill-

lard was there phoning someone there inside. When Mr. Chevillard came out at about the same time and then they asked me about the meat, if the meat was going to be there and I said, "They have trouble with their battery, but they are going to be here pretty soon now." Mr. Jacky was very much in a hurry. He wanted to go to some dinner somewhere. We waited a little and Chevillard and I went back to see if the truck was coming up. We took one car and went to the highway to see if the truck was coming. I could see the truck because it was a yellow truck. I could see it half way between South [190] San Francisco and Millbrae Dairy. We saw the truck on the road, I mean like parking, so we went to the truck and say, "What is the matter?" They say we have trouble with the lights, that the police says that we have no lights and we have to get lights fixed before we can keep on going. The truck was right near a station, where they came to get the lights fixed. We waited a while and I went to get a cup of coffee or something like that and then my partner went back to tell Mr. Jacky that the thing was coming. I stayed at the Millbrae Dairy five or six minutes and I went back again to see if that truck was coming from the junction. I was afraid that they might miss the Millbrae Junction and I wanted them to see me to lead them to the Millbrae Dairy which was two or three miles from there. I went back to the junction of the highway and the old road. Mr. Chevillard stayed at the plant with Mr. Jacky. The truck came along and came to the plant. They began to open up

that truck and Mr. Jacky said, "I never expected so much merchandise. I don't know if I have a place to store so much of that." I didn't see his frigidaire. He began to unload and after about ten or fifteen minutes there was some wooden boxes and my partner said to Barral, "I didn't know this was to be Government meat." Barral said, "That is all right. If you don't want to unload the truck, just mark down the number." Then we kept on unloading. We had no other choice, but to keep on going. The truck was unloaded after which I left Jacky's place and went to the Normandie, where I arrived a little before eleven o'clock that night. I don't know whether Mr. Chevillard was at the Normandie before or after I got back, but it was pretty close to the same time. In all the conversations that I have told about or any others that I had with Mr. Barral, from the time he came back from his trip at the end of December until I got back to the Normandie Restaurant [191] on the night of January 23, Mr. Barral never told me there was 15 or 20,000 pounds of meat on the ship that he wanted to sell. He never told me that he had any meat on the ship that he wanted to sell. He never told me that this truckload of meat he expected to get was to be meat that was to go to the ship. Barral never told me that the meat company was going to send a truckload of meat out and bill it to the ship. Barral never told me that anyone connected with the ship or with the Government was to sign any papers for this truckload of meat. Barral never told me that the meat company was

going to bill the ship or the Government for this truckload of meat. The first time I realized that the meat in the truck belonged to the Government was when Chevillard popped out. That was when Chevillard said, "You fooled me. You didn't tell me it was Government meat and it is Government meat." That is the first time I realized it is Government meat. On the 23rd, before I drove Barral and Lucien to the truck, I first took them to Lucien's house. Lucien wanted to change his clothes. When Barral came back with Lucien, I drove them to Lucien's house and then to where the truck was. Mr. Chevillard was not there. When I drove away I left word with my wife that if Mr. Chevillard came that she should tell him I was going to Millbrae.

Cross-Examination

By Mr. Hammack:

I did not tell my wife where I was going in Millbrae. Mr. Chevillard was at the Millbrae Dairy when I got there. I take care of the bar in the Normandie Restaurant. Most of the business is done from five o'clock in the evening, until twelve o'clock at night. We had very little business in the day time. On January 23, Barral came in about 3:45. He went after [192] a truck driver. I left the Normandie around four or four twenty, maybe later. I drove these two men first to the truck driver's house to change his clothes. Then I drove down to the truck. I saw the truck on the highway on its trip down to Millbrae. I knew that Mr. Barral had a map to

get to Millbrae. I supposed De Angury knew the way down there, but he was drunk and I figured it was pretty hard to find that place with a big truck like that, but with a small car I could find the place. They, in the truck, could find it, if a fellow wants to scout around. They told me to go ahead and show them the way and I went down to show them. I helped them fix the battery and brought the battery back to the truck. I saw the size of the truck. I told Barral it was quite a lot of meat. I did not ask him and there was no discussion about where he had obtained that meat. He just told me he had a truckload of meat from the manager. I did not know it was Government meat until we were unloading it off the truck. I did not stop unloading the truck right then. I continued unloading the truck. I returned from Millbrae in my car. I think it was the same route I came out but I don't know if I come out on Third Street. I went to South San Francisco. I did not stop there. I did not report to the Police that Barral had a truck load of Government meat down there at Millbrae. I know they have a Police Department in San Francisco. I did not ring up the Police Department and tell them I had become involved in a matter in which a man had a whole truckload of meat down at Millbrae Dairy. I did not ring up the FBI and tell them anything about it. I did nothing until I was arrested. I was back at the restaurant an hour and a half before I was arrested. [193]

Testimony of Fernand Chevillard, one of the defendants:

FERNAND CHEVILLARD,

produced as a witness in his own behalf, having been first duly sworn, testified in substance as follows:

Direct Examination

By Mr. Friedman:

My place of business is at 1326 Powell Street. My home is at 520 Cherry Avenue, San Bruno. I am forty-four years old, married and have one child, a girl of fifteen. I am in the restaurant business, the Normandie Restaurant. Mr. Patron is my partner. We have been partners in the Normandie Restaurant since November 1, 1943. We have a bar, a restaurant and after eight o'clock it is classified as a night club. We have dancing and musicians and light music, an old French orchestra, accordion and drum. I am a citizen of the United States and so is Mr. Patron. The bar is inside of the place and back from the door. There are tables between the bar and the door. The bar is separated from the dance floor by a partition about four feet high. You can stand on one part of the partition and look over and talk across it to whoever is at the bar or the other way around. I take care of the dining room, the buying and the help and some bookkeeping. We have two ice boxes or refrigerators at the Normandie. One is used for milk, salad and cheese. The other for chickens, fish, meat and

whatever orders we have left. Those are the only storage places we have in the place. As far as those two cold storage boxes are concerned they would hold about four hundred pounds of meat, if you do not put anything else in them. We have no other place on the premises where we could store any food products at all.

I know Mr. Rodriguez by sight. I saw him many times in the restaurant. He came in as a customer. I never saw him [194] anywhere else besides at the Normandie. At all the times I saw Rodriguez he never talked to me about having any meat on the ship that could be sold. He never talked to me about my buying or his selling meat at all. He never talked to me about meat at all. Barral was first presented to me by my partner about five or six months ago at the Normandie. I know from what has been said here that sometime in September Barral went away on a ship on a trip and he came back about the end of December. Before Barral went away on that trip and sometime in September Barral spoke to me about my buying meat from him. That was not the first time I met him. Some of Barral's friends were there. Barral says, "Do you want to buy some meat?" I said, "I couldn't be bothered," the first time and went on about my business. He spoke to me about meat several times. The next day at the Normandie he says, "Did you make up your mind," and I said, "No, don't bother me." That is all that was said. I suppose the next day I said to him, "Where do you get the meat?" and he says, "I am fixing some-

thing with the manager of the meat company." This was all and he went away. I said, "Nothing doing." I think it was after New Years that Barral again spoke to me about meat. He says, "Are you going to do something this time?" I didn't answer. He talked to me about meat many times again—most every other day I should say. He told me the same story. He said, "I have got a deal with the manager of the meat company." He asked me again, "Are you going to do something about it?" I just walked off. That happened maybe five or six times. It was always in the course of the evening. I never stopped once to speak to him. He was following me around all the time. I mean he would talk to me about this while I was walking around my place tending to my business and he would come around and stop me. About a week before I was [195] arrested on January 24, Barral repeated to me the same thing. He said, "I think I am going to have some meat." I says, "How much?" He said, "I don't know, maybe 10,000 or 15,000 pounds." I said, "Where did you get that meat?" And he said the manager of some meat company. I asked him what company and he said somewheres downtown. He asked me if I wanted to buy some of it and I said, "No, don't bother me with that meat, you know a lot of people around here. You speak to the chefs who come around." Once he came and said, "Listen, I sell it to you cheap, you want it?" I said, "What am I going to do with 15,000 pounds of meat. I have got no money." He said he would sell it cheap 35 or 40 cents a pound, and I said, "If

you give it to me for two bits, I couldn't buy it." He told me I didn't want to help him and I said that I was sorry. I never told Barral up to January 23 that he had asked anybody to buy some meat. On January 22, in the Normandie, about eleven o'clock at night Barral spoke to me across the partition of the bar. He asked me what I was going to do and I told him to leave me alone. I said, "I don't want to have nothing to do with that. I have not got the money. I am too busy." Up to this time there had been no talk as to whether the meat should be kept any place. I then went about my business. About closing time he came to me and said, "Tell me where I can store it. A store place." So I studied a while and said, "All right, I will give you a place, I heard about a place in Millbrae." He told me he didn't know that town and asked how he was going to go there. I said I will give you the name and I will draw you something. I drew some lines and put the name "Millbrae Dairy" there. Several times before that Barral asked me if I knew any place he could store the meat and I told him, "You can't find a storage place to store that much meat." Before January 22 I did not tell him that I knew of any place [196] he could store the meat. I found out about the place I told Barral of on the 22nd because at that time it was very hard to find chickens, and as I was going home I saw a poultry place, Vincenzini Bros. So I stopped there. It was sometime around four on the 21st or 22nd. I saw Angelo Vincenzini there. I went to ask him for chickens. I did not go to Vincenzini

for the purpose of finding a place for Barral to store the meat. I went there for chickens. I had a talk with Mr. Vincenzini. I asked him if he had chickens and he told me that I didn't do much business with him now. I said that I bought all my stuff in San Francisco, that I don't have to go so far away. He said I was a good fellow and he would let me have some. He said at that time, "They are in my freezer," and I say, "Have you got a freezer over there?" and he said, "I have a freezer." So I said, "Some guy wants to store some meat. You think you can store it over there?" He asked me what kind of meat it was and I said, "I don't know. He gets it from a meat company, from the manager." He said, "There is nothing wrong with it, is there?" And I said, "As far as I know the meat, he told me there was nothing wrong with it." Then he says to me, "Do you think we could buy some from him?" and I says, "Well, I don't know," and he said, "It has to be good stuff. I do not want to go to jail." I said, "I think I don't want to bother with the stuff myself." Then Angelo Vincenzini called Millbrae. Up to that time I did not know Mr. Jacky and had never been to the Millbrae Dairy where the refrigerator or the freezing plant was. I heard the conversation of Vincenzini. He said that there was a friend of his with some chickens, and could come and pick them up. I couldn't hear the answer. Then Vincenzini said that somebody wants to store some meat, "Do you think you could accommodate about 10,000 or 15,000 pounds?" Then Vincenzini told me, he said,

[197] "Well, he might have room to store about half of that." That was all that was said and I left.

After I gave Barral this map of Millbrae, the next time I saw him was in Millbrae. I did not see Barral on the 23rd at any time before I saw him at Millbrae. Up to the time I gave Barral the map I had never asked him to get any meat for me. I had never asked him to get me meat off the ship. Barral never told me he had some meat from the ship that he wanted to sell. Barral never told me that he had saved on the ship 10,000 to 15,000 or 20,000 pounds of meat that nobody knew about and that he had it for sale. Barral never told me with respect to this meat that he was going to get, that it was meat that was to go to the ship or the Government or the War Shipping Administration. Barral never told me that the way they were going to get this meat was that the truck was going to be included in a shipment which was to go to the ship or the War Shipping Administration or was to be left out. Barral never told me that somebody at the ship would sign for it. Barral never told me that the meat company was going to charge this truck load of meat to the ship or to the Government or would present a claim to the ship or to the Government for this meat. Whenever Barral mentioned meat I said, "Is that right meat?" I never mentioned Government or anything. I said, "Is it regular meat?" and he said, "Yes," and I said, "You get it right from a wholesale house?" and he said, "Yes." Several times I asked him.

On the 23rd I did go to Millbrae. On the day

before the 23rd Mrs. Hughes, the hostess at the Normandie asked me to come and pick her up around 4:30 as she had to get tickets for Salt Lake City. Mr. Patron was not present. Barral never talked to me about meat when Patron was present. Mrs. Hughes lives at 35 Lake Street. She asked me to come and pick her [198] up. That is why I was at 35 Lake Street on the 23rd. I was there about ten or fifteen minutes and the telephone rang. Mrs. Hughes answered and said to me that Claudia, my partner's wife, is calling and wants to speak to me. I said that I didn't want to speak to her, that I didn't want to go back to the business right away. Mrs. Hughes said over the phone that she would try to locate me. I waited about ten minutes and then I called up Mrs. Patron and asked her what is it, and she said George had left word to tell me to come to Millbrae. I waited a while and then I went to Millbrae where I arrived about 5:30 or a quarter to six. I have been to Millbrae lots of times, because that is near my home. I had never been to this cold storage place, the Millbrae Dairy. I stopped in a lunch room and I had a cup of coffee and I asked if they knew where the Millbrae Dairy was and he told me it was down the road. When I came to the Dairy I went to the office and there was nobody there. I rapped on the door and a girl came to the door and I said, "Have you got a frigidaire?" and she said, "Jacky" and then I remembered that was the name Angelo had said to me before. I followed the directions of the girl and the place was closed up. I rang the bell and a man

came and said, "How do you do," and I said, "Hello, did Angelo call you yesterday about a storage place?" He said, "Yes." He said he was talking to him about 10,000 or 15,000 pounds and he has not got the room and he said, "Have you got any meat coming now," and I said, "I don't know myself. All I know is that I got word from my partner to come to Millbrae." We waited about twenty minutes and he showed me the refrigerator and then said that we should go into his apartment, which is behind the frigidaire, and we sat down there and he was telling me that he couldn't wait long because he had a birthday party at Lido's. I told him I didn't want to delay him any more and that if by [199] seven o'clock there was nobody here he should close his door and I was going back. He looked at his watch and said that he had seven minutes more and I said I would telephone back to the Normandie and see what happened there. Then Patron came to the place while I was telephoning. We waited a while and Patron said that we would have to go back to see if the truck was coming. We drove back down the highway and we saw the truck. It was about three or four blocks on the other side of the cross-section of South San Francisco. I saw a Police car there. They said the lights were bad and they had to fix the lights. I told Patron that we should have a cup of coffee and a glass of beer and then we drove back to Millbrae. He stopped there and Patron went away. The truck came while I was talking with Mr. Jacky, and then the truck was started to be unloaded. I was double checking

Mr. Jacky. I took my book you know and tried to write the numbers Jacky was calling out. Jacky was calling out the numbers and I would write it down. That went on for ten or fifteen minutes. Then I came back to the truck and at that time they were lowering the big boxes like this here. Those big wooden boxes. Then they unloaded cardboard carton boxes. I got mad and spoke to Barral in French. I told him what kind of a guy he was, he dragged me into a thing like that, that this was Government meat not meat coming from a butcher, I could see that. I recognized this as Government meat. I said to Barral, "You are crooked to drag us into such a thing like that. All you think about is money. You misled me in every way possible." Barral said something about cold feet. I was talking in French. He said, "If you won't do it, that is all right." I checked a very few boxes after that. Then I went to Jacky and asked him if he would take it and he said he didn't know. Jacky fixed up a bill or statement of the meat that he had got. [200]

I know Mr. Kinelle. He is a chef at the Troc, in San Francisco. About three or four days before the 23rd I spoke to him at the Normandie Restaurant. He was eating there. I was going around the floor and asking the customers how everything was and when I got to his table he says, "Is that the type of steak you serve here?" I told him that was all I could get, that I didn't have many points. He said I gave him the tail end of a filet and I said that I can't help it. I said that there was a guy

who had been trying to sell some meat. When I came back to the Normandie on the night of the 23rd I found this slip of paper that Mr. Kinelle said he left there.

The paper you show me, U. S. Exhibit 15B, headed "Chip Steak Company" on which it says, "Mr. Pierre Barral, 413 Jones Street, 15875 meat for storage" and under it the word "Barral"—I signed that name "Barral" there. I came to sign it because I was the closest to Mr. Jacky and he says, "Which name shall I put down?" I said, "The meat belongs to this fellow over there." He was dressing and I pointed to Barral. Jacky says, "who is going to sign?" and I told Barral in French to come and sign your note, and he says, "Go ahead and sign it." I signed it.

I never asked Barral at any time if he could get any meat for me. I never asked him at any time if he could get me any meat off the ship or Government meat. The first time that I knew that the meat that was in this truck or the meat that was in storage at Jacky's place or that the meat he said he was going to get me was Government meat was when I came to the truck after those big boxes were unloaded.

On January 23 I got back to the Normandie Restaurant about five minutes to eleven and was arrested about ten minutes to one. I was arrested at the door of the restaurant. [201] I heard the bell ring and went to open the door. There were five men there and they said to me "FBI" or "Federal Bureau of Investigation" or something like that,

and they asked me if I was Mr. Patron. I told them no, that I was Mr. Chevillard. They grabbed me by the arm and put the handcuffs on and felt through my pockets. I said, "What is it?" and they said, "You know," and that is all. I told the agents where Mr. Patron was. None of these agents told me what his name was. They took me to the FBI headquarters where I was kept a little over four hours during which they was questioning me from every side. First two men questioned me and then there was another one, and one would go out and another would come, and sometimes there were four men and a man from outside would come inside and open a door and say, "Are you co-operating?" and then he would go out and the man in front of me would start again and another would put me another question and I was arguing all the time and I was kind of lost.

That is my name, Fernand Chevillard, on the bottom of each page of U. S. Exhibit No. 18, and I signed that statement. I did not know the names of the two agents who have been identified in this trial as Ronald A. Wilson and Lee M. Fallaw. When they took me to the Field Office nobody told me I had a right to have a lawyer. I asked if I could have a lawyer and they said, "Yes," and I said I would like to use a phone and the other agent said, "Why don't you make a statement," and I said that I will give him a statement. They told me I could use the phone, but did not show me where the phone was. Nobody asked me whether any promises or inducements were made to me for the

purpose of making the statement. I don't recall that I stated to the agents that night that "about two or three months ago Barral offered to sell me some meat off his ship, [202] but I did not buy any."

Q. The statement goes on and contains this statement: "About Thursday or Friday, January 18th or 19th, 1945, Barral came to the Normandie Restaurant and told Patron and me that he was going to have about 15,000 pounds of meat to sell, that this meat was to be bought for the ship. 30,000 pounds in all, but he wouldn't need it all on the trip and wanted to sell 15,000 pounds of it before it was put on the ship."

Did you tell that to the agents?

A. No, not like that, no.

Q. Did Barral ever tell you at any time that there was to be meat bought for the ship and that he wanted to sell 15,000 pounds of that meat that was to be paid by the ship?

A. No, sir.

Q. What did you tell the agents about Barral telling you anything about any meat to be sold?

A. The only thing I told the agent that he wanted to sell me some meat, but I was broke and I couldn't buy it.

Q. Did they ask you if Barral told you where the meat was coming from?

A. I don't remember.

Q. Did they ask you whether or not Barral told you it was meat for the ship?

A. I don't know.

Q. What is the answer

A. I don't know.

Q. Now, the statement on page 2 contains this statement:

"This agreement to try to sell the meat and find a storage place for it was between Pierre Barral, George Patron and myself."

Did you have any discussion with the agents about that? [203]

A. I didn't want to sign because of that certain paragraph there in the statement, because I fight for the word—twenty minutes or a half hour it seemed. There was never no agreement. I never had no agreement with Barral and Patron together and I tried to point it out to them. It was wrong. So one agent would say, when you are talking about something, and suppose he says, "Barral tells you, are you going to buy something? And you say, Oh, maybe." He says, "That is an agreement, isn't it?"

And another would point me out something else and ask me if it is an agreement. He kept saying, "That is an agreement."

Q. You say that discussion went on for fifteen or twenty or thirty minutes, at least. Tell me this: How long had they been questioning you before anybody started to write this statement?

A. Well, they wrote a few lines, about ten lines.

Mr. Hammack: I submit the answer is not responsive to the question.

Mr. Friedman: Let's hear the whole answer, maybe it is.

A. They didn't write anything for a long time.

Mr. Friedman: Q. What happened during that time when nothing was being written?

A. They were telling me all kinds of things and I was denying and I says, "You can't tell me something I don't want to say. I can't tell you that when I didn't do it." Then they started again.

Q. Then they would write some more, is that right? A. That's right.

The statement was finally finished after five o'clock in the morning.

Q. Did you read the statement?

A. No. [204]

Q. You signed it, though? A. Yes.

Q. Why did you sign it?

A. Because I told them, "I am all in and I don't care what you put in there." I started to argue again about the money side. They said I was going to get something out of it. They said, "You were going to get something. Where were you going to get?" They said, "You were going to get something."

I said, "All right, give me this and I will sign it." And that is all.

Q. That was all?

A. That was all, that's right.

I never had any discussion with Barral as to whether he should ever get anything out of this meat transaction. I never agreed with Barral that I would pay anything for the meat. I never had any understanding or discussion with Barral whereby I would get any profit if I sold any of this meat for him.

Cross Examination

By Mr. Hammack:

I have known Barral about six months. He did come to my restaurant, the Normandie Restaurant. That part of the statement which said that Barral would come to the Normandie Restaurant to see me and my partner is correct. I knew that Barral is a chef on ships and that portion of the statement which says that I knew Barral was a chief on ships is right. Barral first talked to me about meat the first time he came to the Normandie. That portion of the statement which says, "About two or three months ago" Barral offered to sell me some meat off of his ship and I did not buy any is correct except he never mentioned about the ship. The portion of the statement which says that about [205] Thursday or Friday, January 18 or 19, 1945, Barral came to the Normandie and told Patron and me that he was going to have about 15,000 pounds of meat I think is right. As to that portion of the statement which says, "That this meat is to be bought for the ship 35,000 pounds in all, but he wouldn't need it all on the trip and wanted to sell 15,000 pounds," he never mentioned the ship. Never said it was for the ship. I asked Barral where he was going to get 15,000 pounds of meat and he said "Wholesale butcher or manager." I didn't ask Barral where he was going to get the points for 15,000 pounds of meat. I well knew that you need points to obtain meat. I know that even a housewife has to have points in order to buy meat.

Q. Barral offered to sell me 15,000 pounds of

New York cuts, filets, rib and lamb at 40c per pound. He said he wanted to sell the whole 15,000 pounds at the same time." Had you at any time discussed the price of this meat?

A. It was not done like that.

Q. How was it done?

A. He would come to me and say, "I will sell you some meat. I will sell it to you if you want it. I will let you have it for 35 or 40 cents." I never answered once to him yes or no. I said, "Don't bother me, please." That was my answer to him continually.

I never asked Barral where he was going to get the meat to sell to Mr. Kinelle. I never sent Mr. Kinelle. He said, "I know someone who wants to sell some meat."

I talked to Kinelle about January 18 and I saw Barral on January 22. I didn't send Barral to Mr. Kinelle. I didn't say to Barral, "I know a man by the name of Kinelle who would like to buy some meat, because I didn't want to bother no more. It was not like it says in the statement about my making inquiries of Angelo Vincenzini. I did see [206] Vincenzini at his butcher shop in South San Francisco. I do not stop there to see Vincenzini every day. At that time I couldn't find no chickens for about ten days. So I thought by chance I will stop here and ask about chicken. It was about a year since I bought chickens from Vincenzini. I had no occasion to buy any before. I found all I wanted in town. I talked to Vincenzini on January 21, or 22, 1945. I don't know where Vincenzini lives. Vincenzini told

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me he had some chickens he could let me have. He told me I could have ten or twenty dozen, but that he didn't have them there, that they were in storage in Millbrae. I says, "You have storage?" He says, "That is right, a public storage." I asked him if it was a big storage and said that some guy wants to store some meat. He asked me what he was going to do with it and I says, "I think he is going to sell it." I did not go over to the Millbrae Dairy to get the chickens. Vincenzini did not get the chickens for me. I did not actually buy the chickens because it was five o'clock and the dinners start about 5:30 in the Normandie and I wouldn't have time that day to get it, and I thought I would get them tomorrow. On the night of the 22nd I came back to the Normandie about 1:30 and slept there. My partner and I take turns. Sometimes I sleep there and sometimes he sleeps there. I didn't pick up the chickens on the 23rd, but I called up four thirty or five o'clock. I never got the chickens. The portion of the statement which says that Vincenzini told me he thought I could get storage space for the meat at Millbrae is right. So is the portion which says that I saw him in South San Francisco, on January 22, and he personally called the Millbrae Dairy. The portion of the statement is right which says that Vincenzini advised me there was storage space there which I could get.

Q. "That night at the Normandie Restaurant I told Barral [207] and Patron there was storage space available." You did that, did you not?

A. I didn't say like that.

Q. Oh.

A. I say like that, "I think there is a place down the peninsula that has room, but I am not sure."

I drew a map for Barral at ten minutes after twelve when Barral ran after me and said for me at least to give him the address of the storage place. I drew the map at the Normandie Restaurant on the night of the 22nd. It is correct that on January 23 I was at 35 Lake Street when I got a phone call about 4:30 p. m. from Mrs. Patron. I went to Millbrae on the night of January 23 because Mrs. Patron told me my partner was gone there. My first thought was, "I bet you that he has gone with Barral." The reason why I thought he had gone to Millbrae was because that was the only name that had been mentioned when Barral asked me for the map. I thought Barral had persuaded my partner to go there. I imagined Barral came and told them he had the truck or something. I went to Millbrae because I wanted to find out what happened. Patron was my partner and if he is going to do a mistake I was going to try to stop him. I wanted to find out because Barral was so tricky and lied in so many things. It was for my protection to go over and find out. I was suspecting something. I wasn't sure of anything. I called South San Francisco and asked for Mr. Angelo Vincenzini and he was not there. I did so because I see that this is my chance to pick up the chickens. Angelo Vincenzini's brother was there and I said, "Are the chickens down at your place or are they still at Millbrae?" And he said he couldn't tell me, that his brother wasn't there and wouldn't

be back until six or 6:30. I went and got some coffee and I called again South San Francisco to find Angelo Vincenzini to see if I could [208] pick up the chickens. I couldn't find Angelo nowhere. When I saw Patron I asked him what was up. That is when he told me, "Barral came and pestered me and wants me to help him with the truck." I asked what kind of a truck and he says, "I don't know." Patron and I waited about an hour and a half for the truck.

The book you show me is my notebook. The figures in it "15,875" that is the number that Jacky gave me. That is supposed to be the weight of what is in the truck. I was interested in that fact because Barral told me to check up the merchandise for him.

I started to check and when I discovered I had been misled in some way I had a long argument with Barral and he said if I didn't want, to drop everything and just check out. When we were more than half way through the truck unloading was when I saw it was Government meat. I stopped checking right there. I did not leave. I did not wait for the weight. Barral told me to take the total so I took it down. The sheet you show me is where I wrote the total in my book, and also reads "Pierre Barral, 415 Jones, 15875 pounds of meat" was on my person when I was arrested. I wrote the name Barral on there. That is all in my handwriting.

Redirect Examination

By Mr. Friedman:

Q. One more thing: In this statement that Mr. Hammack and I have questioned you about, there

appears this set of words: "Barral had told Patron and me that the meat belonged to the Merchant Marine." Did Barral ever tell you that?

A. No, it was all new to me about the Merchant Marine. He was always coming in civilian clothes.

Q. I am not asking you that. Listen to what I said: "Barral had told Patron and me that the meat belonged to the Merchant Marine."

A. No, no, I didn't say it that way.

Q. Did you have any discussion with the men who took [209] your statement about the Merchant Marine at all? A. Yes.

Q. What was said?

A. They pointed to me, they says, "Do you know Barral is in the Merchant Marine? That is the Government." I says, "I don't know if he is in the Government or not. I always see him in civilian clothes. I don't know Merchant Marine or——"

Q. Did you tell the members of the F.B.I. that Barral told you that the meat belonged to the Merchant Marine?

A. No, not that one, no.

Mr. Friedman: That's all.

Defendant Chevillard Rests.

Defendant Patron Rests.

Testimony of George Halstead for the United States

GEORGE HALSTEAD,

recalled by the United States, in rebuttal, having been previously sworn, testified in substance as follows:

Direct Examination

By Mr. Hammack:

I am familiar with the fact that an order for meat was placed with the Ed Heuck Company for the Sea Perch for the voyage which she was going out on about the 23rd or 24th of January, 1945. There was an order placed with the Ed Heuck Meat Company for the Sea Perch for an earlier voyage sometime in September or October, 1944. The chief steward on the Sea Perch gets a copy of the invoices of the orders for meat and for all supplies that have been ordered and supplied to the steamship. Mr. Rodriguez was the chief steward on the Sea Perch in October and at that time had copies of invoices from the Ed Heuck Company. I have here two invoices for the October voyage. This is an invoice [210] covering the meat delivered from the Ed Heuck Company to the Sea Perch on voyage two, on which she left on October 29. A carbon copy of that invoice was delivered to Mr. Rodriguez.

(The invoice was marked U. S. Exhibit 22 in evidence solely for the purpose of showing the name of the dealer.)

Thereupon an adjournment was taken until Thursday, March 15, 1945, at ten a. m., whereupon the following proceedings were had:

Government Rests.

All Defendants Rest.

Exception No. 29

Thereupon Mr. Friedman, on behalf of the defendant George Patron and on behalf of the defendant Fernand Chevillard moved the court to direct the jury to return the following verdicts, to wit: A verdict finding the defendant Patron not guilty on Count One of the indictment, a verdict finding the defendant Patron not guilty on Count Two of the indictment, a verdict finding the defendant Patron not guilty on Count Three of the indictment, a verdict finding the defendant Chevillard not guilty on Count One of the indictment, a verdict finding the defendant Chevillard not guilty on Count Two of the indictment, a verdict finding the defendant Chevillard not guilty on Count Three of the indictment. Each of said motions was made upon the ground that all of the evidence introduced in the case was and is insufficient to support either a verdict or judgment of guilty as to each defendant and that no offense sought to be charged in each count of the indictment had been proved by the evidence as against the defendant Patron or against the defendant Chevillard. The court denied each of said motions for directed verdicts to which ruling of the court each of said defendants excepted. [211]

Thereupon the cause was argued by the respective counsel for the parties and on March 16, 1945, the court delivered the following: [212]

CHARGE TO THE JURY

The Court (orally): Ladies and gentlemen of the jury, you have listened at considerable length to the

evidence in this case and to the arguments of the attorneys, and I should like you now to give your attention to the Court for some advice and instructions to you as to the principles of law that are applicable in a case of this kind, and to guide your deliberations.

We started this case with seven defendants named in the three counts of the indictment. Two of the defendants, the defendant Barral and the defendant De Angury, pleaded guilty. Two of the defendants the defendant Vincenzini and the defendant Jacky have been dismissed by the Court, and you will therefore bring in a verdict of not guilty as to the two defendants that I have last named, namely, Jacky and Vincenzini. You are called upon in this case, therefore, at this stage, to determine the guilt or innocence of the three remaining defendants, Rodriguez, Patron and Chevillard.

The fact that two defendants pleaded guilty creates no presumption of any kind as to the guilt or innocence of the three defendants now on trial. That is the only issue. That issue, as to the guilt of the three remaining defendants, is to be determined by you only upon the evidence produced here, guided by the law as the Court will give it to you. Likewise, you must keep in mind that the action of the Court in dismissing Vincenzini and Jacky does not indicate any opinion of the Court as to the guilt or innocence of the three defendants remaining on trial, nor does it create any presumption as to the guilt or the innocence of the three defendants on trial. As I have stated, there are three defendants that

are still on trial, all of them charged in the indictment with having violated laws of the United States. I think it is needless to point [213] out, yet I will do so, that although all of the three defendants are charged jointly, the guilt or innocence of each defendant must be determined by the jury separately. Each has the same rights as though he were being tried alone.

Now, during the course of such instructions and advice as I may give you, I will perhaps use the word “defendants” or “defendant”—and I will have to use it somewhat frequently—and unless I name some particular defendant you will understand that each defendant is thus specifically referred to; and any instructions given referring to “defendants” or “defendant” generally will be understood and considered by you as referring to each defendant separately and individually.

In the first place, let me call your attention to some general rules and principles of law that are applicable to trials in the Federal court in criminal cases. First of all, you, the jury, and myself, the judge of the Court, have different functions. It is your duty and your province and your responsibility to determine the facts of the case, to determine the guilt or innocence of the three defendants, and each of them, on trial. With that function the Court has no concern, and that is exclusively your job.

The duty of the Court is to advise you as to the law of the case, and it is also your duty to follow the instructions that the Court gives you as to the law of the case. Now, the Court expresses no opinion as to the guilt or innocence of the defendants. As

has been stated to you, the jury system is an old system, historically and traditionally, and by law that is exclusively your function.

In the course of the trial, as I stated to you at one time during the trial, the Court has been called upon to make rulings upon objections to the introduction of testimony and in connection with motions to strike out testimony. The Court [214] made comment at times and gave its reason for making such rulings. From that you are not to infer in any manner that the Court has any opinion or intended to express any opinion as to the issue submitted to you for decision, namely, the guilt or innocence of the defendants. Nor are you to understand from anything that the Court says during the course of the instructions that the Court is intending to express any opinion as to the guilt or innocence of the defendants. That is not the intention.

You must exclude in your deliberations in this case both sympathy and prejudice. You are not to concern yourself with the matter of punishment of the defendants or any of them in the event of a verdict of guilty. The matter of punishment is for the Court. Your province is to determine, as I have stated, only the matter of the guilt or innocence of the defendants.

I told you at the time of your impanelment as jurors, and I repeat it now, that there is no presumption whatever arises because the grand jury has indicted the defendants in this case that the defendants, or any of them, are guilty. At all stages of the proceeding the defendants and each of them are presumed to be innocent. This presumption con-

tinues until all of the evidence introduced for or on behalf of the government proves the guilt of the defendants, or any of them, beyond a reasonable doubt.

Now, you should know what we mean when we speak of the term "reasonable doubt." A reasonable doubt is defined to be such a doubt as you may have in your minds when, after fairly and impartially considering all of the evidence, you do not feel satisfied to a moral certainty of the defendant's guilt.

Let me say to you that there is almost always difficulty in proving a fact to an absolute and complete certainty. Therefore, you should keep in mind that a reasonable doubt is not [215] a mere possible or imaginary doubt, or a bare conjecture. The rule of reasonable doubt applies to every material element of the offense charged.

Whether you believe or you do not believe the witnesses who have testified in this case, and the weight to be attached to their testimony respectively is a matter for your sole and exclusive judgment.

You start out with the presumption, namely, that a witness is presumed to speak the truth. However, this presumption may be negated by the manner in which he testifies, by the character of his testimony, by contradictory evidence, by his motive, or by evidence as to his character and reputation for truth, honesty and integrity. In passing upon the credibility of the various witnesses, it is your right to accept the whole or any part of their testimony or to discard and reject the whole or any part thereof.

If it is shown that a witness has testified falsely on any material matter, you should distrust his tes-

timony in other particulars, and in that event you are free to reject all of the witness' testimony. It is your overall duty to scrutinize carefully the testimony given, and in so doing to consider the following elements:

The circumstances under which the witness testified; his demeanor and manner on the witness stand; his intelligence; the connection or relationship which he bears to the government or to the defendants; the manner in which he might be affected by the verdict; the extent to which he is contradicted or corroborated by other evidence, if at all; and any other matter which reasonably sheds light upon the credibility of the witness.

It is your duty to disregard any testimony stricken out by the Court, or any testimony to which an objection has been [216] sustained. You should receive oral admissions with caution.

The attorneys in their argument to you in this case, ladies and gentlemen, have commented upon and argued upon the facts. If you find any variance between the facts testified to by the witnesses and what has been stated to you by counsel to be the facts, to the extent of such variance, you must consider only the facts testified to by the witnesses.

You may find discrepancies or inconsistencies in the testimony of a witness, or perhaps between the testimony of different witnesses. If such discrepancies or inconsistencies are not material and do not affect the true issues of this case, and if they do not reasonably bear upon the guilt or innocence of the defendants, do not waste your time in considering

them. You should use your good sense just as you would in acting upon the most vital and important matters pertaining to your own affairs. Resolve the facts of this case according to calm, deliberate and cautious judgment, in the light of your own knowledge of the natural tendencies and propensities of human beings.

Remember that the defendant is entitled to any reasonable doubt you may have in your minds, but at the same time remember that if you have no such doubt the Government is entitled to a verdict.

Each of the defendants in this case has testified in his own behalf. That being so, you will determine the credibility of each of the defendants according to the same standards that are applied to any other witness. These standards I have already pointed out to you. You may, in addition, consider in this connection the interest each of the defendants may have in the case, his hopes and his fears, and what he has to gain or lose as a result of your verdict.

There has been some mention made of circumstantial evidence. [217] I, therefore, believe that it is proper for the Court to define that to you.

I will say, in the first place, there are two classes of evidence recognized and admitted in courts of justice, upon either of which juries may lawfully find an accused guilty of crime. One is direct or positive testimony of an eye-witness to the commission of the crime, and the other is proof in testimony of a chain of circumstances pointing sufficiently strong to the commission of the crime by the defendant, and which is known as circumstantial evidence. Such

circumstantial evidence may consist of statements by the defendant, plans laid for the commission of the crime, in short, any acts, declarations or circumstances admitted in evidence tending to connect the defendant with the commission of the crime. There is nothing in the nature of circumstantial evidence that renders it less reliable than the other class of evidence.

If upon consideration of the whole case you are satisfied to a moral certainty and beyond a reasonable doubt of the guilt of the defendants, or any of them, you should so find, irrespective of whether such certainty has been produced by direct evidence or by circumstantial evidence. The law makes no distinction between circumstantial and direct evidence in the degree of proof required for conviction, but only requires that the jury shall be satisfied beyond a reasonable doubt by evidence of either the one character or the other, or both.

In cases of circumstantial evidence facts should be proven which are not only consistent with the guilt of the defendant but inconsistent with any other reasonable hypothesis.

In every crime there must exist a union or joint operation of act and intent, and for a conviction both elements must be proven to a moral certainty. Such intent is merely the [218] purpose or willingness to commit such act. It does not require a knowledge that such act is a violation of law. However, a person must be presumed to intend to do that which he voluntarily and wilfully does in fact do, and must

also be presumed to intend all the natural, probable and usual consequences of his own act.

Every person of legal responsibility who voluntarily cooperates with or aids, or assists, or advises, or encourages another in the commission of a crime is an accomplice, without regard to the degree of his guilt.

An accomplice is defined to be one concerned with others in the commission of a crime. It is a settled rule of law in this country that even accomplices in the commission of a crime are competent witnesses, and that the government has the right to use them as such; it is the duty of the court to admit their testimony and that of the jury to consider it. The testimony of accomplices, however, is always to be received with caution and weighed and scrutinized with great care, and the jury should not rely on it unsupported, unless it produces in their minds a most positive conviction of its truth. If it does, the jury should act upon it.

Whoever directly commits any act constituting an offense defined in any law of the United States, or whoever aids, abets, counsels, induces or procures its commission, is a principal and to be prosecuted and punished as such. In other words, whoever directly does the thing that is a violation of the law is a principal, as is also one who either aids, abets, counsels, induces, or procures the doing of that act.

The word "aid" means to help, to support, or to assist.

The word "abet" means to instigate or encourage by aid or countenance, or to contribute.

It is essential to the guilt of a person charged with [219] aiding and abetting the commission of the crime that such person's acts shall have contributed to the effectuation of the offense. It is sufficient if it facilitated the result and rendered the accomplishment of the offense more easy.

A person who knowingly renders assistance, cooperation, and encouragement in the commission of an offense is one who aids and abets in the commission.

Now, I think, ladies and gentlemen, that about gives you the general principles of law that are applicable in the trial of a case of this kind. I have some further instructions to give you that particularly pertain to the offenses charged in this indictment.

The pertinent provision of the statute under which the defendants on trial are charged in the first and second counts of the indictment is as follows. It is a part of section 80 of title 18 of the United States Code:

“Whoever shall knowingly and wilfully make or cause to be made any false or fraudulent statements or representations in any manner within the jurisdiction of any department or agency of the United States, or whoever shall knowingly and wilfully conceal or cover up by any trick, scheme or device a material fact in any matter within the jurisdiction of any department or agency of the United States, shall be punished” in the manner thereafter provided in the statute.

Now, the first count of this indictment, as I ad-

vised you at the time of the impanelment, charges the defendants with making a false or fraudulent statement or representation in connection with a matter within the jurisdiction of a department or agency of the United States, and the second count of the indictment charges the defendants with knowingly concealing or covering up by a trick, scheme or device a material fact [220] within the jurisdiction of a department or agency of the United States. The first count charges the false representation of a material fact. The second count charges the covering up and concealment of a material fact within the jurisdiction of a department or agency of the United States.

Now, the particulars in which the indictment charges the defendants with the offense under this statute in the first count is, in substance, that the defendants knowingly and wilfully falsely stated and represented, or caused to be represented, to an agency of the United States that approximately 64,793 pounds of meat had been delivered by the Ed Heuck Company to the War Shipping Administration, and had been received by the War Shipping Administration, when in truth and in fact only approximately 46,961 pounds had been delivered.

The substance of the charge in the second count is that the defendants wilfully and knowingly covered up and concealed the fact that 64,793 pounds had not been delivered to an agency of the United States, and that 17,832 pounds had been diverted.

Now, ladies and gentlemen of the jury, I instruct you if you are convinced beyond a reasonable doubt

and to a moral certainty that the defendants, or any of them, performed the acts which I just described to you set out in the indictment in this case, you may find them, or any of them, guilty. If you are not convinced beyond a reasonable doubt and to a moral certainty then you will find the defendants not guilty under either or both of the two counts of the indictment as described to you.

In order to establish a violation of the statute I have just read to you, and with which we are here concerned, the government is not required to show that the War Shipping Administration lost money or property as a result of the alleged [221] acts of the defendants, nor is it necessary to show that the War Shipping Administration was deceived thereby. Proof beyond a reasonable doubt and to a moral certainty of the knowingly and wilfully making or causing to be made of a false or fraudulent statement or representation in a matter within the jurisdiction of the War Shipping Administration, establishes a violation of the statute.

I wish to instruct you at this time that the War Shipping Administration is and was at the time of the events described in the indictment, an agency or department of the United States. In supplying and operating the steamship *Sea Perch* the United Fruit Company acted as agent of the United States. In ordering and taking delivery of the meat described in the indictment from the Heuck Company, the United Fruit Company acted as agent of the War Shipping Administration, which in turn was an

agency or department of the United States Government.

The law under which the defendants are charged in the third count of the indictment, commonly known as the conspiracy count of the indictment, is known and described as section 88 of title 18 of the United States Code, and it provides, in the pertinent parts, as follows:

“If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as the law provides.”

The third count of the indictment alleges in substance that beginning on or about the 16th day of January, 1945, the defendants wilfully and knowingly conspired and combined to commit offenses against the United States, to-wit, to defraud the United States in the manner following, to-wit. Then it [222] alleges that the defendants, knowing that the War Shipping Administration had placed a purchase order with the Heuck Company for approximately 64,793 pounds of meat for delivery to the War Shipping Administration, conspired, confederated and agreed together to cause the Heuck Company to present a claim, false in part, to the War Shipping Administration for a total amount of approximately 64,793 pounds of meat, when in truth and in fact, as the defendants knew, only approximately 46,961 pounds of meat would actually be delivered.

Then it is further charged in the third count of the indictment that the defendants conspired to cause false statements to be made in the manner described in the first count of the indictment. Then the third count goes on further to charge the defendants with concealing by trick, scheme and device, a material fact within the jurisdiction of the War Shipping Administration, as more particularly described in the second count of the indictment. So that in the third count of the indictment there are three elements alleged, namely, confederating and conspiring together to cause the presenting of a false claim and securing payment from the United States therefor, and a conspiracy to commit the acts specifically charged in the first and second counts of the indictment.

Now, as the defendants are charged with conspiracy it is necessary for me to instruct you as to the law on the subject of conspiracy.

The law under which count 3 of the indictment in this case is drawn provides that if two or more persons conspire to commit any offense against the United States, and one or more of them does any act to effect the object of the conspiracy, each of the parties to such conspiracy is guilty.

In order to establish the crime charged, it is necessary, first, that the conspiracy or agreement to commit the particular [223] offense against the United States, as alleged in the indictment, be established, and, secondly, to prove further that one or more of the parties engaging in the conspiracy has committed some act to effect the object thereof.

To constitute a conspiracy, it is not necessary that two or more persons should enter into an express agreement for the unlawful venture or scheme, or that they should directly state between themselves or otherwise what the unlawful plan or scheme is to be, or the details thereof, or the means by which the unlawful combination is to be made effective. It is sufficient if two or more persons, in any manner, positively or tacitly come to a mutual understanding to accomplish a common and unlawful design. In other words, when an unlawful end is sought to be effected, and two or more persons, actuated by the common purpose of accomplishing that end, work together in any way in furtherance of the unlawful scheme, every one of such persons becomes a member of the conspiracy. The success or failure of the conspiracy is immaterial, but before a defendant may be found guilty of the charge it must appear beyond a reasonable doubt that a conspiracy was formed as alleged in the indictment, and that the defendant was an active party thereto.

In order to warrant you in finding a verdict of guilty against the defendants, or any of them, under the third count of this indictment, it is necessary that you be satisfied beyond a reasonable doubt that a conspiracy, as charged in the indictment, was entered into between two or more of the defendants to violate the law of the United States in the manner described in the third count of the indictment. It is necessary further that, in addition to the showing of the unlawful conspiracy or agreement, the government prove to your satisfaction, beyond a

reasonable doubt, that one or more of the overt acts described in the indictment was done by one or more of the [224] defendants, or at their direction, or with their aid, to effect the object of the conspiracy.

Under the charge made, the conspiracy constitutes the offense, and it must be made to appear from the evidence, beyond a reasonable doubt, before any defendant can be convicted, that such defendant was a party to the conspiracy and unlawful agreement charged, and that he continued to be such up to the time that overt acts were committed, if the evidence shows there were any such. The mere fact that either or any of the defendants named may have engaged in the performance of any of the acts charged in the indictment as overt acts, would not authorize a conviction by reason of that fact alone, but it is necessary to show that such defendant or defendants were parties to the conspiracy and unlawful agreement before their guilt of the offense charged is made out.

I did not read to you, ladies and gentlemen, during the course of these instructions the overt acts which were charged in the third count of the indictment. I read them to you, however, at the time of your impanelment as jurors; and when I hereafter refer to the overt acts in the course of these instructions, I am referring to the overt acts that I read from the indictment during the time that I read the third count of the indictment.

Each party must be actuated by an intent to promote the common design in a case of conspiracy. If persons pursue by their acts the same unlawful object, one performing one act, and a second another act, all with a view to the attainment of the object they are pursuing, the conclusion is warranted that they are engaged in a conspiracy to effect that object. Cooperation in some form must be shown. There must be intentional participation in the transaction with a view and purpose to further the common design. And if a person, understanding the [225] unlawful character of a transaction, encourages, advises, or in any manner, with a purpose to forward the enterprise or scheme, assists in its prosecution, he becomes a conspirator. And so a new party, coming into a conspiracy after its inception, with knowledge of its purposes and object, and with intent to promote the same, becomes a party to all of the acts done before his introduction into the unlawful combination, as well as to the acts done afterward. Joint assent and joint participation in the conspiracy may be found, like any other fact, as an inference from facts provide.

Where the existence of a criminal conspiracy has been shown, every act or declaration of each member of such conspiracy, done or made thereafter pursuant to the concerted plan and in furtherance of the common object, is considered the act and declaration of all the conspirators and is evidence against each of them. On the other hand, after a conspiracy has come to an end, either by the accomplishment of the common design, or by the parties

abandoning the same, evidence of acts or declarations thereafter made by any of the conspirators can be considered only as against the person doing such acts or making such statements. The declaration or act of a conspirator not in execution of the common design is not evidence against any of the parties other than the one making such declaration.

The evidence in proof of the conspiracy may be circumstantial. Where circumstantial evidence is relied upon to establish the conspiracy or any other essential fact, it is not only necessary that all the circumstances concur to show the existence of the conspiracy or fact sought to be proved, but such circumstantial evidence must be inconsistent with any other rational conclusion. That is, you are to consider all of the circumstances and conditions shown in evidence, and [226] if it appears to you as reasonable men that, even though there is no direct evidence of the actual participation in the alleged offense by the defendants, or either of them, a reasonable inference from all of the facts and circumstances does to your minds, beyond a reasonable doubt, show that the defendants, or some of them, were parties to the conspiracy as charged, then you should make the deduction and find accordingly.

It is not necessary that it be shown that any person concerned in the alleged conspiracy profited by the things which he did, but if any of the defendants, with knowledge that the law was designed to be violated in the particular manner charged in the

indictment, aided in any way by affirmative action in the accomplishment of the unlawful act, they would be guilty. To this statement there is one exception, and that is, if before any overt act has been committed on the part of any conspirator, or at his suggestion, or with his aid or participation, any such conspirator withdraws from the conspiracy and wholly disassociates himself from the project or the carrying out thereof, he ceases to be a conspirator and is without guilt.

An overt act need not be criminal in nature, if considered separately and apart from the conspiracy; it may be as innocent as the act of a man walking across the street, or driving an automobile, or using a telephone. But if, during the existence of the conspiracy, the overt act is done by one of the conspirators to effect the object of the conspiracy, the crime is complete; and it is complete as to every party found by you to be a member of the conspiracy, no matter which one of the parties did the overt act.

It is not necessary that all the overt acts charged be proved, but it is necessary that at least one of these be proved and that it be shown to have been in furtherance of the object of the conspiracy. Other overt acts than those charged may be [227] given in evidence, but proof of one of those charged in the indictments is indispensable.

Now, ladies and gentlemen, you have been burdened with a lot of law, but it is necessary that all of these matters be brought to your attention, and that you be adequately instructed on every phase

of the law that is pertinent to the particular issue that you have to decide. Some times these instructions appear to be so long, but we cannot help that.

Ladies and gentlemen, you are expected to agree upon a verdict in this case. You should freely consult with one another in the jury room. If anyone should be convinced that your view of the case is erroneous, do not be stubborn, and do not hesitate to abandon your own view under such circumstances. On the other hand, it is entirely proper to adhere to your own view, if after a full exchange of ideas you still believe you are right.

I wish to caution you that if during your deliberations it becomes necessary for you to communicate with the Court, or upon your return to Court, respecting any matter connected with the trial of this case, you should not indicate to the court in any manner how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the defendants, or any of them. This caution you should observe at all times after the case is submitted to you, and until you have reached a verdict.

Whenever all of you agree to a verdict, it is the verdict of the jury. In other words, your verdict must be unanimous.

When you are pursuing your deliberations in the jury room, if you require or need the exhibits in the case, or any of them, you may so notify the court and they will be provided for you.

When you retire to the jury room to deliberate, you will [228] select one of your number as foreman or forelady, and he or she will sign your ver-

dict for you when it has been agreed upon, and he or she will represent you as your spokesman in the further conduct of this case in this court.

Has either side any exceptions to note?

Mr. Friedman: Yes, I have a few.

The Court: Very well, I will excuse the jury. Ladies and gentlemen, there is a legal matter that the Court desires to take up before finally submitting the case to you. You will therefore retire to the jury room. The case has not yet been submitted to you for decision, and therefore until it is you will observe the admonition of the Court that you are not to converse among yourselves or with any person on any subject connected with the trial of this case, nor are you to form or express an opinion thereon until the case has been finally submitted to you. You may take the jury out.

(Thereupon the jury retired.)

Mr. Friedman: We cannot follow the old rule and say "We note an exception to all of the Court's instructions." You cannot do that anymore. On behalf of the defendants Chevillard and Patron, separately, because I do not wish to re-state it, so it may be understood, I have an objection and exception separately in behalf of the defendant Chevillard and in behalf of the defendant Patron.

First, I wish to note an objection and exception to that portion of your Honor's charge defining the term "reasonable doubt," and in your definition that all that was required was that they do not feel satisfied to a moral certainty. Such is not

the law. Only moral certainty is required in determining the facts in a civil case, but more than that is required in a criminal case; not only moral certainty is required, but it must be moral certainty and beyond a reasonable doubt. Your [229] Honor did not so instruct the jury, and I note an exception in that regard.

Exception No. 30

Likewise, I wish to note an exception to that portion of your Honor's charge dealing with circumstantial evidence. Your Honor's instruction, I believe, so far as it went, was correct, but I did not hear your Honor instruct the jury on the doctrine of two hypotheses, that where circumstantial is relied upon to establish a matter that not only must the circumstances be consistent with guilt, but they must be inconsistent with any other reasonable hypothesis, and if they are equally consistent with the hypothesis of innocence the finding must be in favor of the defendant.

Exception No. 31

I next wish to note an objection and exception to that portion of your Honor's charge dealing with the definition of aiding and abetting. Your Honor read or told the jury in part what an aider and abettor was, but I believe that your Honor failed to instruct the jury that before anyone can be found guilty of aiding, abetting, counseling, advising, etc., in a criminal act, in which the party did not in fact commit the act, himself, that is the

act, which amounts to co-operation, aiding, assisting, must be done with a criminal intent, and must be done with the intent of having the ultimate act actually done and accomplished. I think your Honor omitted that in your instructions, and I note an exception in that respect.

Exception No. 32

I likewise desire to note an exception to your Honor's instruction to the jury as to the elements involved in the third count of the indictment. Your Honor instructed the jury that the third count of the indictment involved a conspiracy to commit several acts, to-wit, to defraud the United States, to make a false representation to the War Shipping Administration, to resort to a trick, scheme or device for the purpose of concealing a material fact from the War Shipping [230] Board, etc. The indictment, as I read the third count, states specifically that the defendants are charged with the offenses, to-wit, to defraud the United States in violation of title 18, USCA, section 80, and that the balance of the indictment simply alleges the manner and means in which they were to defraud the United States, and that the portion that relates to the false claim and resorting to the trick and device of getting a receipt to be signed are not the things that they are charged with conspiring, but they are merely stated as the means whereby the sole object of the conspiracy, to-wit, to defraud the United States, was accomplished. As I stated, I desire to note an exception.

Exception No. 33

I likewise desire to note an exception to your Honor's refusal to give defendants' requested instruction No. 3, which states that the jury has a right to consider in determining the credibility of the defendant Barral the fact that he has pleaded guilty, and the fact that judgment has not been pronounced upon him, and the fact that he is testifying under the expectation of immunity or leniency as to the charges to which he has pleaded guilty; that that goes to his credibility and can be considered by the jury in determining credibility.

I likewise desire to note an exception to the refusal of the Court to give defendants' instruction No. 6, of Defendants' Requested Instructions, which deals with the first count of the indictment, and amplifies what I consider to be a self-evident proposition, that before the defendant Chevillard or Patron can be guilty of the offense set forth in count 1 of the indictment, provided that somebody else actually made the false statement to the War Shipping Administration, it must be established that it was done with the knowledge of both Chevillard and Patron, and, stated conversely, that it was done with their knowledge or consent, either one of them.

I likewise desire to note an exception to the Court's refusal to give defendants' requested instruction No. 7, which deals with the definition of principal, and with aiding and abetting, and states that if any such false statement was made to the War Shipping Administration, and if the defend-

ant Chevillard had no knowledge thereof and did not actually aid, abet, counsel, command, induce or procure such other person to make such statement, that he could not be guilty under count 1, if he did not make the statement, himself.

I desire to take an exception to the failure of the court to give requested instruction No. 8. No. 7 was as to defendant Chevillard, but this is as to the defendant Patron.

I likewise desire to note an exception to the refusal of the Court to give defendants' requested instruction No. 10, which deals with the question of criminal intent, so far as count 1 of the indictment is concerned, and which in effect would have told the jury that the intent involved is a specific intent to defraud the United States, and that the mere making of a false representation is immaterial unless accompanied with the criminal intent to defraud the United States, or the War Shipping Administration.

The Court: It is not necessary for you to state the substance of the instructions that you are taking exception to. Just refer to them by number.

Mr. Friedman: I have only done that for the record sufficient to call it to the Court's attention.

The Court: Where you are taking an exception to the refusal to give a requested instruction, just refer to it by number. I have your instructions before me.

Exception No. 34

Mr. Friedman: As long as that is understood I will do so. I desire to note an exception to the re-

fusal of the Court to give requested instruction No. 11. [232]

I likewise desire to note an exception to the refusal of the Court to give defendants' requested instruction No. 12.

Exception No. 35

I likewise desire to note an exception to the court's refusal to give requested instruction No. 13, and likewise requested instruction No. 14, which is the same instruction, one applying to Chevillard and one to Patron, and which has to do with their guilt of actually having done the things charged in count 2.

Exception No. 36

I likewise desire to note an exception to the refusal of the Court to give requested instruction No. 15, which has to do with knowledge on the part of the defendant of any false statement having been made to the War Shipping Administration.

Exception No. 37

Likewise, I desire to note an exception to the Court's refusal to give Defendants' requested instruction No. 19, which I might state, briefly, was a request to tell the jury what the defendants were not on trial for.

I also desire to note an exception to the failure of the Court to give requested instruction No. 22, which has to do with the liability of a person who joins a conspiracy after it has been formed.

I likewise desire to note an exception to the refusal of the Court to give requested instruction No. 23, which is an application of the principles involved in 22 as to the defendant Chevillard; likewise, I except to the refusal of the court to give requested instruction No. 24, which is an application of the principles involved in No. 22 as to the defendant Patron.

I desire to note an exception to the refusal of the Court to give requested instruction No. 33, which is that defendants are presumed to have a good character for the traits involved.

I desire to note an exception to the refusal of the Court to give requested instruction No. 35, which has to do with [233] the credibility of a witness' testimony is necessary in order to convict.

Exception No. 38

Lastly, I desire to note an exception to the refusal of the Court to give requested instruction No. 37.

I think that covers my exceptions.

Mr. Resner: With regard to the defendant Rodriguez, may it be taken that the same exceptions which Mr. Friedman has noted on behalf of Patron and Chevillard may be noted in behalf of the defendant Rodriguez, that is, both as to instructions given by your Honor, and those that your Honor failed to give, as long as ours in large part adopted Mr. Friedman's instructions. If that may be done it will save me from reading them in detail.

The Court: Let the record so show. As to my in-

struction in connection with circumstantial evidence, on any other reasonable hypothesis, I think I read it, and you may not have noted it. I may have left out that sentence at the end of my instruction, and so there will be no doubt about it, I will give it to the jury again. Bring the jury back.

(The jury was returned into court.)

The Court: Ladies and gentlemen, there was one instruction that I gave you relating to circumstantial evidence, and I am not certain as to whether or not I included all the elements in it that I intended to, and in order to save time and not have the Court Reporter go back and find precisely what I said, I am going to re-read my instruction on circumstantial evidence. By so doing I am not intending to emphasize that any more than any other instruction, but simply for the purpose of clarifying the situation as to whether or not I fully gave the instruction on circumstantial evidence that I intended to give.

There are two classes of evidence recognized and admitted [234] in courts of justice, upon either of which juries may lawfully find an accused guilty of crime. One is direct or positive testimony of an eyewitness to the commission of the crime, and the other is proof in testimony of a chain of circumstances pointing sufficiently strong to the commission of the crime by the defendant, and which is known as circumstantial evidence. Such circumstantial evidence may consist of statements by the defendant, plans laid for the commission of the

crime, in short, any acts, declarations or circumstances admitted in evidence tending to connect the defendant with the commission of the crime. There is nothing in the nature of circumstantial evidence that renders it less reliable than the other class of evidence.

If upon consideration of the whole case you are satisfied to a moral certainty and beyond a reasonable doubt of the guilt of the defendants, or any of them, you should so find, irrespective of whether such certainty has been produced by direct evidence or by circumstantial evidence. The law makes no distinction between circumstantial and direct evidence in the degree of proof required for conviction, but only requires that the jury shall be satisfied beyond a reasonable doubt by evidence of either the one character or the other, or both.

In cases of circumstantial evidence facts should be proven which are not only consistent with the guilt of the defendant but inconsistent with any other reasonable hypothesis.

Ladies and gentlemen, we have a form of verdict prepared for your convenience which sets forth the names of the defendants and number of counts, and there are blank spaces for you to fill out when you come to your determination of guilty or not guilty, as to each count of the indictment. This form has been prepared for your convenience only. It is not to indicate in any manner how you should decide the case, but, [235] as I have stated, it is a form prepared for your convenience. The jury may now retire.

That defendants' requested instructions numbered 3, 11, 13, 14, 15 19 and 37, referred to in the foregoing exceptions, which instructions the court refused to give to the jury are as follows: [236]

Requested Instruction No. 3

Two of the defendants in this case, Pierre Barral and Lucien L. DeAngury have taken the stand as witnesses in behalf of the Government. Each of these witnesses has pleaded guilty to the charges contained in the indictment. In considering the credibility to be given to each of these witnesses you have a right to take into consideration the fact that each of these men has pleaded guilty and is awaiting the pronouncement of judgment. You have a right to consider these facts in determining the bias that each of these witnesses may have against their co-defendants and in determining whether or not these two men are testifying under the expectation of immunity or leniency as to the charges to which they have pleaded guilty. If you determine that either of these men are testifying in favor of the Government due to any bias they may have against any other defendant in the case or under the expectation of any immunity or leniency, you have a right to consider such fact in determining the credibility of each such witness.

Requested Instruction No. 11

By the second count of the indictment on file herein the defendants are charged with knowingly, wilfully, unlawfully and feloniously, covering up

and concealing by a trick, scheme and device a material fact within the jurisdiction of the War Shipping Administration and that the material facts so covered and concealed by such trick and scheme and device are as follows: that the defendants knew that the War Shipping Administration had ordered from the Ed Heuck Company approximately 64,793 pounds of meat, to be delivered by the said Ed Heuck Company to the said War Shipping Administration; that possessing such knowledge the defendants diverted and withheld from said shipment approximately 17,832 pounds of said meat with the intent and for the purpose of converting the same to their own use and with the intent to defraud the said War Shipping Administration, the defendants covered up and concealed the fact of said diversion and conversion of approximately 17,832 pounds of meat by the trick, scheme and device of signing and causing to be signed and issuing and causing to be issued by the said War Shipping Administration a receipt to the said Ed Heuck Company for approximately 64,793 pounds of meat.

Before you can find either the defendant Chevillard or the defendant Patron guilty on this second count of the indictment you must be satisfied from the evidence to a moral certainty and beyond a reasonable doubt that such defendant did in fact sign or caused to be signed or issue or cause to be issued by the War Shipping Administration said receipt for approximately 64,793 pounds of meat. If the evidence established that the defendant Chevillard did not sign or cause to be signed and was not in-

strumental in having the said War Shipping Administration issue or caused to be issued such receipt, you must return a verdict finding the defendant Chevillard not guilty. If the evidence established that the defendant Patron did not sign or caused to be signed and was not instrumental in having the said War Shipping Administration issue or caused to be issued such receipt you must return a verdict finding the defendant Patron not guilty. If you have a reasonable doubt as to whether the defendant Chevillard or the defendant Patron signed or caused to be signed or was instrumental in having the War Shipping Administration issue or cause to be issued such receipt, you must resolve such doubt in favor of such defendant and acquit him on the second count of the indictment. [237]

Requested Instruction No. 13

Before you can find the defendant Chevillard guilty on count two of the indictment you must be satisfied to a moral certainty and beyond a reasonable doubt that the defendant Chevillard signed and caused to be signed, or was instrumental in having the War Shipping Administration issue or cause to be issued a receipt to the said Ed Heuck Company for approximately 64,793 pounds of meat. If the evidence established that some person other than the defendant Chevillard issued or caused to be issued said receipt or was instrumental in having the War Shipping Administration issue or cause to be issued said receipt but that the defendant Chevillard had no knowledge thereof, and did not

abet, counsel, command, induce or procure such other person to do such act, you must return a verdict herein finding the defendant Chevillard not guilty on count two of the indictment.

Requested Instruction No. 14

Before you can find the defendant Patron guilty on count two of the indictment you must be satisfied to a moral certainty and beyond a reasonable doubt that the defendant Patron signed and caused to be signed, or was instrumental in having the War Shipping Administration issue or cause to be issued a receipt to the said Ed Heuck Company for approximately 64,793 pounds of meat. If the evidence established that some person other than the defendant Patron issued or caused to be issued said receipt or was instrumental in having the War Shipping Administration issue or cause to be issued said receipt but that the defendant Patron had no knowledge thereof, and did not abet, counsel, command, induce or procure such other person to do such act, you must return a verdict herein finding the defendant Patron not guilty on count two of the indictment.

Requested Instruction No. 15

If you should find from the evidence that either the defendant Chevillard or the defendant Patron co-operated with some other defendant in this case for the purpose of finding a place to store approximately 17,000 pounds of meat that had been sent

by the Ed Heuck Company to the War Shipping Administration and if you should also find that either of these defendants likewise co-operated with some other defendant for the purpose of moving a truck in which said 17,000 pounds of meat was being transported, these facts even of themselves will not be sufficient in justifying you to return a verdict finding either Chevillard or Patron guilty of the offenses set forth in count one or count two of the indictment. Before either of these defendants can be found guilty on either count one or count two of the indictment the evidence must establish to a moral certainty and beyond a reasonable doubt that they had actual knowledge that the War Shipping Administration was going to be called upon to sign or caused to be signed or issue or caused to be issued, the alleged receipt for approximately 64,793 pounds of meat. If the defendant Chevillard and Patron did not know of this fact and did not act by way of counsel, advice, assisting or instigating the signing and issuing of such receipt you must find the defendants Chevillard and Patron not guilty on counts one and two of the indictment, no matter what else you may find the defendants did do relating to the matters and things set forth in the indictment. [238]

Requested Instruction No. 19

The defendants Chevillard and Patron are not on trial for having defrauded the Ed Heuck Company or for having conspired to steal from the Ed Heuck Company any meat. If you should find that

the defendants Chevillard and Patron did the particular acts set forth in count three of the indictment and that they had agreed between themselves or with other defendants in the case to do such things only for the purpose of stealing or diverting to their own use meat belonging to the Ed Heuck Company and had no intention of defrauding the United States or the War Shipping Administration, or concealing any material fact from the War Shipping Administration, or stealing any meat belonging to the War Shipping Administration, you must return a verdict finding the defendants Chevillard and Patron not guilty.

Requested Instruction No. 37

When independent facts and circumstances are relied to establish by circumstantial evidence, the guilt of a defendant, each material, independent fact or circumstance in the chain of facts relied upon must each be established to a moral certainty and beyond a reasonable doubt. If in the chain in the facts of circumstantial evidence any one or more of the material facts in such chain are not established to a moral certainty and beyond a reasonable doubt, the entire proof fails and a verdict of not guilty must be returned.

Thereupon the jury retired to deliberate upon the verdicts and subsequently returned into court with a verdict finding the defendant Chevillard not guilty on Count One and guilty on Counts Two and Three of the indictment, and a verdict finding the defendant George Patron not guilty on Count

One and guilty on Counts Two and Three of the indictment.

Thereafter the matter was continued until March 19, 1945, at which time the following proceedings were had:

Exception No. 39

Thereupon each of the defendants filed their motion with the court for a new trial as appears by the record herein, each of which said motions was by the court denied, to which denial each defendant then and there duly and regularly excepted.

Exception No. 40

Thereafter each defendant moved the court for an order for arrest of judgment as to Count Two of the indictment, as [239] appears by the record herein, each of which motions was denied by the court to which denial each defendant then and there duly and regularly excepted.

Thereupon the court imposed sentence upon each defendant.

Dated: May 10, 1945.

LEO R. FRIEDMAN

Attorney for Defendants
Chevillard and Patron

STIPULATION RE SETTling OF BILL OF
EXCEPTIONS, ETC.

It is hereby stipulated and agreed by and between the respective parties hereto that the fore-

going bill of exceptions on behalf of the defendants Fernand Chevillard and George Patron, on appeal herein to the United States Circuit Court of Appeals, in and for the Ninth Circuit, has been duly presented within the time allowed by law and the rules and orders of this court, and that the same is in proper form and conforms to the truth and sets forth all of the evidence and all of the proceedings relating to the trial of said defendants and that it may be settled, allowed, signed, and authenticated by the United States District Court and the Judge thereof as the true bill of exceptions on behalf of said defendant and that it may be made a part of the record in this cause.

Dated at San Francisco, California, May 25, 1945.

LEO R. FRIEDMAN

Attorney for said Defendants

VALENTINE C. HAMMACK

By JAMES E. BURNS

Special Assistant to the

Attorney General

[Endorsed]: Filed May 26, 1945. [241]

[Title of District Court and Cause.]

ORDER SETTLING BILL OF EXCEPTIONS

The foregoing bill of exceptions, duly proposed by the defendants Fernand Chevillard and George Patron and duly agreed upon by the respective

parties thereto, having been duly presented to the court within the time allowed and required by law and by the rules and orders of this court, duly and regularly made in that behalf, is hereby settled, allowed, signed and authenticated as in proper form and as conforming to the truth and as containing all of the evidence and proceedings relating to the trial and conviction, motion for a new trial and motion in arrest of judgment in said cause and as the true bill of exceptions herein and the same is hereby made a part of the record in this cause and the clerk of said court is hereby ordered to file the same and to transmit it to the Circuit Court of Appeals for the Ninth Circuit.

Dated: May 26th, 1945.

LOUIS E. GOODMAN

United States District Judge

Copy of the within proposed Bill of Exceptions received this 12th day of May, 1945.

VALENTINE C. HAMMACK

By MARGARET ANNAS

Special Assistant to the

Attorney General. [242]

In the Southern Division of the United States
District Court, for the Northern District of
California

No. 29193-G

UNITED STATES OF AMERICA,
Plaintiff and Appellee,
vs.

JULIO RODRIGUEZ,
Defendant and Appellant.

PROPOSED ADDITIONS TO BILL OF EX-
CEPTIONS PROPOSED BY APPEL-
LANTS ~~CHEVILLARD AND PATRON~~ RODRIGUEZ

On page 97 in place of the sentence commencing
on line 1 with the word "The" and ending on line
4 with the word "defendants" insert the following:

Mr. Hammack: "I offer this in evidence as
against the defendant Rodriguez and for identifi-
cation as to the other defendants.

The Court: It may be admitted.

(The delivery receipt was marked U. S. Ex-
hibit 5 in evidence against Rodriguez and for
identification as against the remaining defend-
ants.)

Mr. Resner: What was Mr. Hammack's last
statement?

(The reporter read the record as requested.)

Mr. Resner: Am I to understand that this is—
I will withdraw the objection, your Honor, at this
time.

The Court: Of course, I think it is a misnomer, gentlemen. I know attorneys do it all the time. Something is not in evidence [243] for identification. It is either in evidence or it is not. The identification is merely on the paper so you will know what you are talking about.

Mr. Resner: Then I will object on behalf of the defendant Rodriguez on the ground that as to him this document is hearsay. I mean there is no showing here by anybody that he had at any time seen this, or that it was presented to him, or that he knew anything about it. This all went on between Mr. Hinman and Mr. Barral, the assistant steward, incidentally. There has not been a word connecting Mr. Rodriguez with this. It is not signed by him, nor ever shown to him.

Mr. Hammack: It has been testified, may it please your Honor, that the defendant Rodriguez made arrangements for it.

The Court (Referring to Exhibit 5): What is this right here?

Mr. Resner: That says "Bryant Nielsen." That is the signature apparently of the dock checker.

Mr. Hammack: That is correct, your Honor.

Mr. Resner: There is no showing against Rodriguez, no more so than against anybody else in the case, your Honor.

The Court: I will overrule the objection. You may have an exception. It may be admitted."

On page 165, line 29, insert the following:

DALLAS A. JOHNSON

testified further as a witness on behalf of the United States as follows:

Direct Examination

By Mr. Hammack:

"I first talked to Rodriguez on January 24, 1945, aboard the S.S. Sea Perch at Berth 1, outer harbor, Oakland Army Base, Oakland, California; and at that time and place I arrested him and took from him a notebook which I examined, and which contains a telephone number Tuxedo 6825, under which number is written the [244] words "Manager" and "Joe."

Special Exception No. 1
(Rodriguez)

Mr. Resner: I object to any further questions along that line. I want to make a motion to suppress this as having been taken from the defendant unlawfully, without any warrant for its being taken. It was taken illegally against the consent and wishes of the defendant here by the agents' admission and statement on the stand. He took it from the defendant Rodriguez.

The Court: Is that the basis of your motion?

Mr. Resner: My motion to suppress and my motion to exclude is upon that basis.

The Court: Upon the basis of the testimony of the witness?

Mr. Resner: So far, and the basis that there is no showing there was any warrant had for taking it.

The Court: I will deny the motion. You may have an exception."

The book was admitted in evidence and marked United States Exhibit No. 17.

Cross-Examination

By Mr. Resner:

"I boarded the Sea Perch approximately 1:30 a.m., January 24, 1945. I first saw Rodriguez at approximately 2:00 a.m. the same morning. I was in the company of another FBI agent whose name is Glenn Trofast. I did not have a warrant at that time for Mr. Rodriguez' arrest. I did not have a warrant to search him. I did not have a warrant to search his quarters. I took the book, Government Exhibit No. 17, from his person. I took a carbon copy and a pencil copy of the steward's department account of stores and requisitions. I think we took two letters which had been written to him. At the time I did not know whether they involved anything in connection with this case. It appeared as if they might. The letters had something to do with the case. They had [245] to do with the defendant's background and the people to whom he had been writing, and it also mentioned the fact that he had had some violent dispute with the Army authorities on a previous voyage concerning the amount of meat that he was feeding the troops. I do not believe it mentioned the meat specifically; it mentioned the fact that there had

been a complaint registered regarding the manner in which he was feeding the troops on the S. S. Sea Perch. I cannot produce the letters at the present time. I do not have them on me. It would be hard to say right now what else I took from Mr. Rodriguez. I do not think of anything else right now that I took from him.

Concerning the inventory, Mr. Rodriguez gave it to me and I took it from him. I told Mr. Rodriguez at the time that we had reason to believe that he had submitted a false inventory. I told Mr. Rodriguez that I would check the inventory against the supplies on the ship. I did not do that; I was unable to. Personally, I do not know whether the inventory is true or false. It is my opinion that it was false."

Redirect Examination

By Mr. Hammack:

"We did not take an inventory on the ship at that particular time because we placed Mr. Rodriguez under arrest, and we remained with him during that period until such time as he had been placed in the County Jail. The following morning an effort was made to take the inventory and it was found that the meat had been loaded into the lockers on board the ship and that other cargo had been piled on top of the hatches, and the vessel was due to sail in a few hours and we would have to hold the vessel up for a period of at least twenty-four hours, and perhaps more, to take an inventory. We considered it to be more to the benefit of the country

to have the troops that were going on that ship out to sea, en route to wherever they were going, rather than to hold up the ship and [246] detain the troops that were going overseas.”

On page 254, line No. 24, after the word “dealer” insert the following:

DALLAS A. JOHNSON

was recalled by the United States as a witness and testified as follows:

Cross-Examination

By Mr. Resner:

“When Mr. Rodriguez—when I first saw Mr. Rodriguez, he was sitting in the dining salon on the Sea Perch, and I am not positive, but I believe he was drinking a cup of coffee. I asked somebody outside the door if the gentleman inside was Mr. Rodriguez. I went into the dining salon and I said, “Is your name Mr. Rodriguez?” And he said, “Yes.” I asked him if he would mind stepping outside of the room for a few moments, and he stepped outside of the room, and at that time I said, “We are Federal officers. You are under arrest. We would like to see you for a few moments. We would like to talk to you for a few moments.” At that time he invited us down to his cabin on the ship. When we got into the cabin of the ship, that is, his cabin of the ship, we asked him to sit down, and we sat down, and we told him again at that time, he was moving about the room,

and we told him to sit down, as he was under arrest, and we didn't want him moving about the room. He sat down on a cushion, that is, a cushion affair that is part of the cabin, part of the seat, and we said, "We would like to talk to you for a few moments," and we spent the next fifteen or twenty minutes, approximately, getting—that is, asking—we asked him the questions and he gave us the answers, where he was born, his age, his physical description, his height and weight, whether or not he had ever been arrested——"

Special Exception No. 2
(Rodriguez)

Q. "What was his answer to the question of whether or not he had ever been arrested?"

Mr. Hammack: I am going to submit this is going too far beyond the scope of the direct examination.

The Court: I think so. Some of this was gone into on the direct case.

Mr. Resner: It has not, your Honor. He didn't go into that.

The Court: I don't want to argue about it, Mr. Resner. I won't allow you to take up the time of the Court and jury to listen to testimony that has already been given. It is not proper on rebuttal.

Mr. Resner: It was not asked on direct.

The Court: It was only asked on rebuttal as to certain questions. I feel it is beyond the limits of cross-examination to go into this.

Mr. Resner: I submit it was never gone into before, if you will look at the record.

The Court: I cannot see the materiality that the defendant was asked about his age and where he was born.

Mr. Resner: All right, let us pass that over.

Q. Let me ask you this: Tell me everything relevant to the questions of——

Mr. Hammack: Just a minute. I will renew my objection.

The Court: I will sustain the objection, that it is too broad, going into matters not covered in rebuttal.

Mr. Resner: May I have an exception?

The Court: You may have an exception."

By Mr. Resner:

"I made notes of the conversation aboard the ship with Mr. Rodriguez. The notes are part of the file of the FBI at 111 Sutter Street, San Francisco, California. I put in the notes that Mr. Rodriguez stated that the Tuxedo telephone number was a friend [248] of Rodriguez in New York City. I do not recall whether he told me that there were other numbers in the book of other friends in New York City. I told Mr. Rodriguez that he was involved with Barral in diverting a shipment of meat from the government. Rodriguez said, "Whatever Barral has done, I don't know anything about that."

I have here my notes taken both aboard the vessel and the field office at the FBI of a conversation that I testified to with Mr. Rodriguez wherein I

testified that he told me that the Tuxedo telephone number was of a friend of his in New York, and it does not appear in these notes. I believe I made reference to that testimony in some other notes. However, I could not find these other notes last night. My notes do not show that I told Mr. Rodriguez that he was charged as stated in the indictment, although I so testified. It does not appear in these notes that Rodriguez stated that the Tuxedo telephone number was that of a friend of his named "Joe." I believe I made some other notes containing some references to this incident. I looked for those notes and I have brought into Court everything I was able to find on the subject. I throw notes away every day. I cannot say whether I threw away notes concerning my conversation with Rodriguez or not."

Dated: July 20, 1945.

ANDERSEN & RESNER

HERBERT RESNER

Attorneys for Appellant

Julio Rodriguez

[Endorsed]: Filed July 28, 1945. [249]

At a Stated Term, to wit: The October Term, 1944, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Thursday the fifth

day of July in the year of our Lord one thousand nine hundred and forty-five.

Present: Honorable Francis A. Garrecht, Senior Circuit Judge, Presiding; Honorable Clifton Mathews, Circuit Judge; Honorable William Healy, Circuit Judge.

No. 11022

JULIO RODRIGUEZ,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER EXTENDING TIME TO SETTLE
AND FILE PROPOSED BILL OF EX-
CEPTIONS, ETC.

Upon consideration of the petition of appellant, for an extension of time within which to file proposed amendment to proposed Bill of Exceptions, and of the stipulation of counsel therefor, filed,

It Is Ordered that time within which appellant may have settled and filed his Bill of Exceptions, and filed his assignments of error be, and hereby is extended to and including July 20, 1945. [250]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS OF APPELLANT
JULIO RODRIGUEZ

Julio Rodriguez, defendant and appellant in the above cause, having appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and sentence entered in the above cause against him and having duly given Notice of Appeal as provided by law, now hereby makes and files the following Assignment of Errors herein, upon which Appellant Julio Rodriguez will apply for a reversal of said judgment and sentence upon appeal, and Appellant Rodriguez further states that there is manifest error in the following particulars, to wit:

I.

Appellant Julio Rodriguez incorporates by this reference, without setting each of them out, each and every one of the exceptions noted herein and assigned as errors by the Appellants Chevillard and Patron, adopting as his numbers on such exceptions taken by said appellants the numbers used in the Assignment of Errors of said appellants, although Appellant Rodriguez will rely upon only [251] those Assignment of Errors which particularly apply to his case, and particularly the following:

1) That the Court erred in refusing to grant a directed verdict of not guilty upon Counts One, Two and Three of the indictment, which motion was made at the close of the government's case and

renewed upon the close of all evidence and testimony of the case. Said motion was made upon the ground that the evidence was insufficient to support a verdict of guilty against Appellant Rodriguez, and against any one or all of the counts of said indictment.

2) The Court erred in refusing to give the instructions requested by Appellant Rodriguez, and erred in giving other instructions, all of which is particularly set out in the Assignment of Errors of said Appellants Chevillard and Patron.

II.

That the Court erred in denying the motion for a directed verdict of not guilty upon Count One of the indictment, which motion was made at the conclusion of the government case, and renewed when all the evidence and testimony in the case had been completed. That said motion was based upon the ground that the evidence in the case was insufficient to support a verdict of guilty.

III.

That the Court erred in admitting into evidence United States Exhibit No. 5, the delivery receipt signed by Mr. Brandt-Neilsen, and on which the following proceedings occurred:

Mr. Resner: Then I will object on behalf of the defendant Rodriguez on the ground that as to him this document is hearsay. I mean there is no showing here by anybody that he had at any time seen this, or that it was presented to him, or that he

knew anything about it. This all went on between Mr. Hinman and Mr. Barral, the assistant steward, incidentally. There has not been a word connecting Mr. Rodriguez with this. It is not signed by him, [252] nor ever shown to him.

Mr. Hammack: It has been testified, may it please your Honor, that the defendant Rodriguez made arrangements for it.

The Court (Referring to Exhibit 5): What is this right here?

Mr. Resner: That says "Bryant Nielsen." That is the signature apparently of the dock checker.

Mr. Hammack: That is correct, your Honor.

Mr. Resner: There is no showing against Rodriguez, no more so than against anybody else in the case, your Honor.

The Court: I will overrule the objection. You may have an exception. It may be admitted.

IV.

That the Court erred in admitting into evidence United States Exhibit No. 17, the telephone memorandum book, and in denying Appellant Rodriguez' motion to suppress said exhibit and to have same excluded from evidence.

Wherefore, for the many manifest errors committed by the Court, the Defendant and Appellant Rodriguez, by his counsel, prays that the sentence, judgment and conviction imposed upon him be reversed and for such other and further relief as is meet and just in the premises.

Dated: July 20, 1945.

ANDERSEN & RESNER

Attorneys for Defendant

Julio Rodriguez

Receipt of a copy of the within Assignment of Errors is hereby admitted this 23 day of July, 1945.

LEO R. FRIEDMAN

Attorney for Defendants

Chevillard and Patron

VALENTINE C. HAMMACK

Assistant United States At-
torney

[Endorsed]: Filed July 23, 1945. [253]

In the United States Circuit Court of Appeals
in and for the Ninth Circuit

No. 29193-G

UNITED STATES OF AMERICA,

Plaintiff and Appellee,

vs.

JULIO RODRIGUEZ,

Defendant and Appellant.

Stipulation Relating to Additions of Testimony
Applicable to Julio Rodriguez, Defendant and
Appellant, to Bill of Exceptions on File Herein
by Chevillard and Patron, Defendants and
Appellants, and United States of America,
Plaintiff and Appellee.

It is stipulated by and between United States of America, Plaintiff and Appellee, and Julio Rodriguez, Defendant and Appellant, that the Bill of Exceptions filed in behalf of appellants, Chevillard and Patron, may be deemed as the Bill of Exceptions filed in behalf of Julio Rodriguez, Defendants and Appellant, with the exception that there is attached thereto as a supplement transcript of certain testimony pertaining to the defendant and appellant, Julio Rodriguez, the correctness of which is stipulated to, and filed in behalf of defendant and appellant, Julio Rodriguez, under the caption, "Proposed Additions to Bill of Exceptions [254] Proposed by Appellants Chevillard and Patron."

Dated: July 24, 1945.

HERBERT RESNER

Attorney for Defendant and
Appellant Julio Rodriguez

VALENTINE C. HAMMACK

Special Assistant to the At-
torney General

Order of Court: The above stipulation of Counsel is hereby approved and the Bill of Exceptions applicable to Julio Rodriguez, Defendant and Appellant, is hereby settled according to the terms of said stipulation.

Dated: Jul 27 1945

FRANCIS A. GARRECHT

Presiding Judge of the United States Circuit Court
of Appeals, Ninth Circuit

[Endorsed]: Filed Jul 27 1945. Paul P. O'Brien,
Clerk.

A True Copy. Attest: Jul 27 1945.

[Seal] PAUL P. O'BRIEN,
Clerk.

[Endorsed]: Filed July 28, 1945. [255]

[Title of Court and Cause.]

STIPULATION IN RE TRANSCRIPT AND
RECORD ON APPEAL

It is hereby stipulated by and between counsel for the respective parties hereto that there shall be one transcript and record on appeal herein insofar as the same is possible, and that the appellant Julio Rodriguez may use the Bill of Exceptions and such other pertinent papers as are filed by or on file concerning the appellants Chevillard and Patron, and that the appellant Rodriguez shall file such additional papers as are necessary as to him

alone in connection with such transcript and record on appeal.

Dated: San Francisco, California, July 25, 1945.

VALENTINE C. HAMMACK,

Special Assistant to the At-
torney General

HERBERT RESNER,

Attorney for Defendant and
Appellant Julio Rodriguez

LEO FRIEDMAN,

Attorney for Defendants and
Appellants Chevillard and
Patron

[Endorsed]: Filed July 26, 1945. [256]

In the Southern Division of the United States
District Court, for the Northern District of
California

No. 29193-G

UNITED STATES OF AMERICA,

Plaintiff and Appellee,

vs.

JULIO RODRIGUEZ,

Defendant and Appellant.

PRAECIPE

To the Clerk of Said Court:

Sir: Please prepare the transcript and record on appeal in connection with the appeal of Juilo

Rodriguez, defendant and appellant herein, using the Bill of Exceptions heretofore filed by appellants Chevillard and Patron and such other pleadings, papers, documents and orders on file herein as are included in said appellant's record and transcript on appeal, and also the following specific papers, orders and documents:

- (1) Demurrer of defendant Julio Rodriguez;
- (2) Order of Court overruling said Demurrer;
- (3) Plea of Not Guilty by defendant Julio Rodriguez;
- (4) Motion for directed verdict of Not Guilty by defendant Julio Rodriguez made upon the close of the Government's case; [257]
- (5) Minute Order of Court denying said Motion;
- (6) Motion for directed verdict of Not Guilty by defendant Julio Rodriguez made at the close of evidence in the entire case;
- (7) Minute Order of Court denying said Motion;
- (8) Order in re sentence of defendant Julio Rodriguez;
- (9) Judgment against defendant Julio Rodriguez;
- (10) Notice of appeal by Rodriguez;
- (11) "Proposed Additions to Bill of Exceptions Proposed by Appellants Chevillard and Patron" filed by defendant Rodriguez;
- (12) Assignment of Errors of appellant Julio Rodriguez;
- (13) Stipulation between Valentine C. Ham-

mack, Special Assistant to the Attorney General, and Herbert Resner, Attorney for Rodriguez, relating to additions of testimony to Bill of Exceptions proposed by appellants Chevillard and Patron; and order of Circuit Court of Appeal;

(14) Stipulation between all counsel relating to one record on appeal.

HERBERT RESNER

Attorney for Defendant and
Appellant Julio .Rodriguez

Dated: July 25, 1945.

[Endorsed]: Filed July 26, 1945. [258]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 258 pages, numbered from 1 to 258, inclusive, contain a full, true, and correct transcript of the records and proceedings in the matter of The United States of America vs. Fernand Chevillard, George Patron and Julio Rodriguez No. 29193 S, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$19.25 and that the said amount

has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 18th day of September, A. D. 1945.

[Seal]

C. W. CALBREATH,

Clerk

M. E. VAN BUREN

Deputy Clerk [259]

[Endorsed]: United States Circuit Court of Appeals for the Ninth Circuit. No. 11018. Fernand Chevillard and George Patron, Appellant, vs. United States of America, Appellee, vs. No. 11022, Julio Rodriguez, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeals from the District Court of the United States for the Northern District of California Southern Division.

Filed September 20, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11018

FERNAND CHEVILLARD and GEORGE
PATRON,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS RELIED ON AND
DESIGNATION OF PARTS OF TRAN-
SCRIPT TO BE PRINTED

Come now appellants above named and advise the Court that on their appeal they intend to rely on each and all of the points specified as errors in the assignment of errors heretofore filed by appellants, special reference to said assignment of errors being hereby made and by said reference incorporated herein.

Appellants designate the entire record be printed

in that they believe that the same is necessary to fully support and present their position on appeal.

Dated: May 29, 1945.

LEO R. FRIEDMAN

Attorney for Appellants

Copy of the foregoing Statement, etc., received this 29th day of May, 1945.

VALENTINE C. HAMMACK

Special Assistant to the At-
torney General

[Endorsed]: Filed May 29, 1945. Paul P.
O'Brien, Clerk.